

AMERICA'S MERCENARIES: WAR BY PROXY

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General Studies

by

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

AMERICA'S MERCENARIES: WAR BY PROXY, by Major Kevin G. Collins, 94 pages.

Although the government's reliance on contractors to support military forces is not a new phenomenon, the degree to which contractors are involved in Operations Enduring Freedom and Iraqi Freedom (OIF) has increased substantially. In OIF in particular, contractors perform a wide range of services in support of stabilization and reconstruction efforts. Perhaps the most controversial and arguably the most troublesome of these contractors are those that are armed and use violence in the course of fulfilling their contractual obligations. This thesis explores whether or not such contractors, herein identified as private security providers (PSPs), have a destabilizing influence on United States political and military objectives. In doing so, the thesis identifies and evaluates the legal environment in which PSPs operate the intersection between PSP activities and critical requirements and vulnerabilities of coalition forces and PSP involvement within logical lines of operation within Iraq. In concluding, the author posits that PSPs have a destabilizing impact on not only the political and military mission, but the United States military as well. Finally, the author provides recommendations for employing PSPs in the present and future conflicts.

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ACRONYMS

3d ID	Third Infantry Division
CG	Center of Gravity
COE	Contemporary Operating Environment
COIN	counterinsurgency operations
CPA	Coalition Provisional Authority
DoD	Department of Defense
DoS	Days of Supply
GAO	Government Accountability Office
ICRC	International Committee of the Red Cross
IO	information operations
ITAR	International Traffic in Arms Regulations
JP	Joint Publication
LLO	logical line of operations
MEJA	Military Extraterritorial Jurisdiction Act
OIF	Operation Iraqi Freedom
PSP	Private Security Provider

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CHAPTER 1

INTRODUCTION

Context and Problem Statement

The use of contractors on the battlefield is not a new phenomenon in warfare. The armies of Carthage, Rome, and Greece all made extensive use of hired units.¹ During the Hundred Years War, armies consisted of separate units that were each the property of different commanders. As noted historian Samuel Huntington points out, such units were individualists who openly competed with each other under the same commander, possessing little in the way of discipline, common standards, or responsibility.² Prior to the twentieth century, such units were so common that at one time the largest and best organized private entity in Europe was the private army of Count Albrecht von Wallenstein, the wealthiest man in Europe. Wallenstein organized his army much like a modern corporation, with officers holding financial interests in the company.³ Other notable examples of private armies include those created by the huge European trading conglomerates such as the Dutch East India and Hudson Bay Companies, the former eventually becoming larger than the British Army. By the time of the Napoleonic Wars, large privately-owned formations mostly yielded to the rise of large citizen armies, though Napoleon did retain mercenary Swiss regiments within his army.

In North America, the British relied heavily on mercenary forces, employing nearly 30,000 Hessians against the American colonists during the Revolutionary War. During this conflict, the United States also relied on the hired expertise of Baron Von Steuben to train the fledgling Continental Army. However, while the United States military has used contractors in various capacities since the American Revolution, the

role of contractors in subsequent conflicts such as the Civil War and World War I was largely limited to providing support and equipment to military forces while avoiding direct participation in armed hostilities. During World War II, United States forces used contractors to assist with logistics functions such as medical, transportation, maintenance, and provisioning services. By the Vietnam War, the United States military began to rely more heavily on contractors to assist with increasingly technical and complex weapons, communications, and intelligence platforms.⁴ The trend continued during the Gulf War, as there was a contractor deployed for every fifty United States service members. As the United States military continued to downsize throughout the 1990's, forces again increased their reliance on contractors to provide logistics services, particularly during deployments to the Balkans. The use of contractors has become dramatically more prevalent during the Global War on Terrorism, with the contractor to military ratio decreasing to one contractor for every ten service members in theater.⁵

Meanwhile, the use of armed contractors to render services traditionally performed by military forces or other government agencies has increased significantly. While common in the history of armed conflict throughout the world, the encroachment of contractors into the inherently governmental function of armed service is unprecedented in United States military history. Pre-dating the *Constitution*, the discussion in the *Federalist Papers* regarding the need for military forces presupposed that the preeminent government responsibility of providing security against foreign danger fell within the exclusive domain of the government's military forces.⁶ Huntington further noted that the state should jealously maintain this monopoly on the use of force.⁷ But, as Peter Singer of the Brookings Institution's points out,

With the growth of the global military service industry . . . the state's role in the security sphere has now become deprived. The start of the twenty-first century has begun to see the Weberian monopoly of the state slowly break down. . . Not within the last two centuries, at least, has there been such a reliance on private soldiers to accomplish tasks directly affecting the tactical and strategic success of engagement.⁸

The burgeoning use of private companies to provide security where government forces are traditionally used follows the rise of the private security industry worldwide. For example, in Africa, private security providers (PSPs) protect diamond mines, game preserves, and employees of nongovernmental organizations. In Latin America, PSPs protect drug cartels, guard oil exploration teams and oil drilling infrastructure, and protect the Jose Cuervo distillery. Throughout Asia, shipping companies rely on PSPs to protect them against piracy while DynCorp provides personal security for President Karzai in Afghanistan. Throughout the world, clients of PSPs include rebels, criminals, sovereign governments, multinational corporations, and nongovernmental organizations.⁹

In Operation Iraqi Freedom (OIF), the United States has continued the trend of using PSPs, employing contractors to provide security for other contractors, the military, and other government agencies. PSPs perform critical security missions throughout the battlespace in Iraq. Custer Battles, Inc. provided security for Baghdad International Airport, Erinys International protects pipelines, and Blackwater and DynCorp both have contracts to protect personnel of the State Department.¹⁰ The use of PSPs has had a detrimental effect on stability and support operations and the coalition overall strategy in Iraq. The evidence suggests that the use of PSPs in Iraq has not only undermined the mission, but brought a host of practical problems to commanders on the battlefield and continues to have a detrimental impact on civil-military relations.

In the contemporary operating environment, contractors perform services on the battlefield on an unprecedented scale. Private industry provides logistics support to United States and coalition forces, delivering all classes of supply, providing technical support to United States and coalition forces, operating critical infrastructure, and replacing or rebuilding civil and military infrastructure in both Iraq and Afghanistan. Contractors train and equip Iraqi Security Forces. Perhaps most notoriously, one firm provided personnel to interrogate prisoners at Abu Ghraib prison in Iraq. Additionally, as many as 25,000 contractors provide security services within Iraq alone.¹¹ These services include physical security of fixed installations, convoy security, and personal security for other contractors or United States government and military personnel, security for top Iraqi government officials and members of the media. A collection of PSPs provide security for clients throughout the globe by employing former military personnel of various nationalities.

On 31 March 2004, four security contractors entered the Iraqi city of Fallujah while escorting a small convoy of empty civilian trucks. The contractors, employed by Blackwater U.S.A., bypassed military checkpoints to gain entry to the volatile city, contrary to the prohibition established by the local military commander, Colonel John Toolan. Insurgents ambushed and killed the Blackwater contractors in the city. The insurgents then dragged the charred and mutilated corpses through the streets of Fallujah, creating images reminiscent of a similar incident in Somalia in 1993 in which United States troops suffered the same fate.¹² At the time of the Fallujah incident, military responsibility for the city and the surrounding area had recently transferred to the Marines' Regimental Combat Team One, commanded by Colonel Toolan. Prior to the

murder of the Blackwater employees, Colonel Toolan began engaging the local government leadership in order to gain control of the restive city in Sunni-dominated Al Anbar Province, a process he anticipated would require both time and patience. However, due to the graphic and dramatic images of the attack and its aftermath, Secretary of Defense Donald Rumsfeld and General John Abizaid of United States Central Command decided that the Marines' measured approach did not consider the strategic impact of the event. The murder and mutilation of the contractors became a "symbol of America's humiliation and a challenge to the American occupation."¹³ The Secretary and General Abizaid therefore ordered Colonel Toolan to assault the city of 280,000 in order to establish order and stability, resulting in weeks of savage urban combat, the destruction of many of the buildings within the city and dozens of United States casualties.¹⁴ In this particular case, the lack of coordination between the military authorities and PSPs had operational and strategic impact, allowing insurgents a visual public relations victory and forcing the hand of coalition commanders to take action in retaliation.¹⁵ Such is the current operating environment in OIF, where contractors are increasingly performing battlefield functions traditionally performed exclusively by military forces. Events such as the Blackwater incident in Fallujah have a dramatic and sometimes detrimental impact on United States policy objectives in a conflict where a determined adversary uses dramatic terrorist acts to publicize and ostensibly gain support for its cause.

Research Question

The primary research question: Does the use of PSPs on the battlefield have a detrimental impact on United States political and military objectives, particularly in the current operating environment?

Secondary and tertiary research questions:

Secondary Question. Why and how does the United States government use private security providers?

Tertiary Questions. What are the recent historical examples of the United States government's use of private security providers? What are the roles, functions, and pervasiveness of PSPs in Operations Enduring and Iraqi Freedom?

Secondary Question. What is the legal environment in which PSPs operate?

Tertiary Questions. What legal restrictions govern the use of private providers during war? What is the current United States policy governing the use of PSPs in Iraq? What do international, national, military law, and military doctrine dictate regarding the use of private security providers? What are the contractual obligations and protections of private security provider security firms' employees?

Secondary Question. What is the nature of the current mission in OIF?

Tertiary Questions. How does the use of PSPs contribute to or detract from that mission? How does the use of PSPs affect the military mission in Iraq and the broader civil-military relationship?

Secondary Question. What are the future implications for the United States government and armed services of using PSPs during conflict and is there a better alternative to using private security providers?

Assumptions

1. Troop levels in Iraq will remain constant regardless of insurgent activity.
2. The United States Department of Defense (DoD) and Department of State will continue to employ private security firms in Iraq and Afghanistan.

3. The strategic and operational objectives in Iraq and Afghanistan will remain unchanged.

Definitions

Blue on White Engagement. A Blue on White engagement is an engagement in which blue forces (United States or coalition forces) fire on white forces (private security firms), or vice versa.

Center of Gravity (CG). CG is the source of strength or power for a government or military force. Using the definition provided by the Marine Corps University's Doctor Joe Strange, the CG relies on a critical capability, which provides the CG with its strength and power and allows the CG to function as such. Critical requirements are necessary resources or conditions that must exist for critical capabilities to function. Finally, critical requirements often reveal critical vulnerabilities, which are vulnerabilities that an opposing force can exploit in order to attack and neutralize or defeat a CG.¹⁶

Contemporary Operating Environment (COE). The COE is the overall operating environment that exists today and into the future at least until the year 2020. The range of threats during this period extends from small, lower-technology opponents using more adaptive, asymmetric means to larger and more modern forces able to engage United States forces in conventional, symmetric ways. The factors of the COE relevant to this thesis include the nature and stability of the state and the presence of external organizations, particularly nonstate actors, on the battlefield. The premises of COE relevant to the thesis include the fact that nonstate actors will increasingly assume prominent roles in conflict and that numerous variables beyond military forces will affect combat operations.¹⁷

Contractor. Contractor is a term to describe, in broad terms, a private individual or commercial entity providing services to another entity, either governmental or private, for which it receives payment for services or goods provided. This term will be used throughout the thesis to describe private entities or individuals that perform duties out of a contractual obligation on the battlefield.

Decisive Operation. The decisive operation is the operation that “directly accomplishes the task assigned by the higher headquarters . . . and conclusively determine[s] the outcome of major operations, battles, and engagements.”¹⁸

Logical Lines of Operations (LOL). In stability and support operations, commanders will link multiple objectives and actions with the logic of their purpose. Most often, lines of operations are complementary and assist the commander in synchronizing numerous activities to achieve a desired end state.¹⁹

Mercenary. The Geneva Convention of 1948, amended under Protocol I in 1977, sets forth six criteria a person must meet in order to meet the internationally-recognized definition of mercenary. A mercenary is a person who:

1. Is specifically recruited locally or abroad to fight in armed conflict;
2. Does, in fact, take direct part in hostilities;
3. Is motivated essentially by a desire for private gain and fights on behalf of one party to the conflict and receives material compensation substantially greater than that paid to combatants of that party;
4. Is neither a national of a party to the conflict nor resident of territory controlled by a party to the conflict;
5. Is not a member of the armed forces of a party to the conflict;

6. Is not sent by a state which is not a party to the conflict on official duty as a military member.²⁰

Military Consulting Firm. The military consulting firm is a private entity that provides consultation in military matters to another entity, public or private, for financial reward. Such services involve the training of higher level staffs and officers, and providing advice on military training, organization, and operations.

Military Support Firm. The military support firm is a private entity that provides support and services to military organizations. Such support and services include technical support, intelligence support, and logistics support.

Military Provider Firm. The military provider firm provides forces to another entity, public or private, for the purpose of engaging in armed conflict with another belligerent. The military provider firm is a private entity that offers its services for financial reward. Examples of such firms include the now-defunct Executive Outcomes, Inc. and Sandline International.

Operational or Military Objectives. Operational or military objectives are those objectives that military plans and campaigns attempt to achieve in order to satisfy strategic policy objectives.

Private Military Firm. A private military firm is any private entity that provides services to a government that traditionally fall within the purview of the military. Such firms provide technical support, logistics, consulting, security, or forces to engage in combat operations. There are four categories of private military firms described below in table 1.²¹

Private Security Provider. PSPs are private entities that provide security and protective services to clients such as corporations, governments, and private individuals. There are approximately 60 such firms with almost 25,000 employees working in Iraq, providing security services for other contractors, the United States government, to include the United States military, and other clients. This thesis will focus on the use of PSPs.

Table 1. Military Firm Taxonomy		
Firm	Activities	Examples
Military Support	Logistics, Command and Control, Transportation, Maintenance, Food Service, Technical Support	Kellogg, Brown, and Root (KBR)
Military Consultant	Training, Consulting, Mentoring	Military Professional Resources Incorporated (MPRI), Vinnell
Military Provider	Active combat, offensive and defensive operations, regime change	Sandline, Executive Outcomes
Private Security Provider	Physical security, protection of infrastructure, convoys, and personnel	Erinys, Blackwater, Custer Battles

Stability and Support Operations. Though stability and support operations are defined separately in United States Army doctrine, the services use these terms together. Stability operations are peacetime developmental, cooperative, or coercive activities undertaken in concert with defensive or offensive combat operations to promote and sustain regional and global stability. Support operations are operations conducted to assist

civil authorities, foreign or domestic, or, in a case where civil authority is fractured or nonexistent, to enable civil authority and ensure its long-term success and viability.²²

Strategic Objectives. Strategic objectives are national objectives that are to be achieved through policy or action at the national and international level.

Limitations

The contractual relationship between PSPs and their employees is worthy of examination. However, the details of such contracts between private firms and private individuals are often outside the reach of research. Therefore, research will not include an examination of the contractual relationships and obligations between private security firms and their employees. Further, this thesis will avoid examining the political context of contracts with PSPs, particularly the political patronage and lobbying efforts that are behind the awarding of many contracts in Iraq. Though lobbying and campaign contributions on behalf of PSPs may illuminate the question of why the United States increasingly relies on private security providers, it is an issue that is beyond the scope of this thesis.

Delimitations

While the traditional role of military forces will be explored in broad terms, the examination of the use of PSPs will be limited to the United States' use of such firms during OIF. The research will not examine the role of military support, consultant, or provider firms, except where such firms employ PSPs to provide protection of personnel, equipment, or facilities. Additionally, while notorious and worthy of further study, the use of contracted interrogators at Abu Ghraib prison is beyond the scope of this thesis.

Significance of Study

The pervasive presence of private security firms in Iraq and Afghanistan creates unique challenges for military commanders at every level. Problems such as armed contractors roaming a commander's battlespace with little regard to the military mission or "blue on white" engagements in which contractors and coalition forces trade gunfire, creates significant command and control problems for military commanders. Moreover, such incidents have a detrimental impact on the coalition's ability to bring stability and maintain the rule of law in Iraq. However, while the presence of PSPs creates challenges for commanders, PSPs can also offer several benefits. The use of PSPs in certain roles can free up troops for other missions and help commanders to remain within the imposed limits on the numbers of troops while responding to numerous and complex mission requirements in Iraq. The purpose in examining the research questions was to study the use of PSPs in Iraq, examine the legal environment in which they are employed, and draw lessons from anecdotal evidence in order to offer a framework for using PSPs in the current operating environment. Therefore, while many military professionals will appreciate that PSPs are a foregone conclusion in any operation, the question will be not whether to employ PSPs, but rather how they can be employed in a manner that compliments and contributes to the overall mission.

¹David A. Isenberg, *A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Security Companies in Iraq* (United Kingdom: British American Security Information Council, 2004), 15.

²Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (New York: Vintage Books, 1957), 21.

³Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003), 28.

⁴Defense Logistics Agency, *Contractor Support in Theater of Operations*, Desktop Supplement, 28 March 2001 [document on-line]; available from <http://www.dscpl.dla.mil/contract/doc/contractor.doc>; Internet; accessed on 22 December 2005.

⁵Isenberg, 7.

⁶Alexander Hamilton, John Jay, and James Madison, *The Federalist Papers, 1787-1788* (New York: Bantam Books, 1982), 105, 203-4.

⁷Singer, 8.

⁸Ibid.

⁹Ibid., 9.

¹⁰Deborah C. Kidwell, Global War on Terrorism Occasional Paper 21, *Public War, Private Fight? The United States and Private Military Companies* (Fort Leavenworth, KS: Combat Studies Institute Press, 2005), 31.

¹¹Government Accountability Office, Report No. 05-737, *Rebuilding Iraq: Actions Needed to Improve use of Private Security Providers* (Washington, DC: GPO, 2005), 8.

¹²Sameer N. Yacoub, *Iraqis Drag Four Corpses through Streets*, Associated Press 31 March 2004 [article on-line]; available from http://globalsecurity.com/iraq/iraqis_drag/iraqis_drag.htm; Internet; accessed on 5 September 2005.

¹³Bing West, *No True Glory: A Frontline Account of the Battle for Fallujah* (New York: Bantam Books, 2005), 59.

¹⁴Ibid.

¹⁵John Toolan, Colonel, USMC, Interview by Public Broadcast Service, *Frontline: Private Warriors*, 21 June 2005 [interview on-line]; available from <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/interviews/toolan.html>; Internet; accessed on 19 September 2005.

¹⁶Joe Strange, *Centers of Gravity and Critical Vulnerabilities* (Quantico, VA: Marine Corps University Press, 1996), 1-4.

¹⁷Center for Army Lessons Learned, U.S. Army Training and Doctrine Command, *Operations Enduring Freedom: Tactics, Techniques, and Procedures*, Handbook No. 02-8 [handbook on-line]; available from http://www.strategypage.com/articles/operation_enduringfreedom/chap1.asp; Internet; accessed on 18 September 2005.

¹⁸U.S. Department of the Army. Field Manual 3-90, *Operations* (Washington, DC: GPO, 2001), 4-23.

¹⁹Ibid., 5-9.

²⁰International Committee of the Red Cross, Protocol I to 1949 Geneva Convention, Article 47, 8 June 1977 [article on-line]; available from <http://www.icrc.org/IHL.nsf>; Internet; accessed on 20 November 2005.

²¹Singer, 92-1000. The taxonomy of PMFs is derived from Singer's model. However, Singer's work does not give specific treatment to private security providers. Hence, I have added the fourth category to Singer's original taxonomy of PMFs to include private security providers, a term used in the GAO report cited in endnote 11.

²²U.S. Department of the Army, Field Manual 3-07, *Stability Operations and Support Operations* (Washington, DC: GPO, 2002), 1-2 and 1-3.

CHAPTER 2

LITERATURE REVIEW

Introduction

The intent of this chapter is to identify and evaluate available literature relevant to the research topic. The marked increase in the use of contractors and, more specifically, PSPs, has predictably resulted in increased treatment of such entities in press coverage and academic work and thus offers a wealth of available literature. Additionally, press reports of events such as the Blackwater incident in Fallujah also stimulated a high level of interest from Congress and its investigative arm, the Government Accountability Office (GAO). In the aftermath of such incidents, governments undertook a flurry of regulatory efforts in an attempt to define the relationships and responsibilities of contractors in relation to host nation governments and clients while also attempting to impose stricter penalties against errant or abusive contractors. The research placed the available literature into a taxonomy that allowed a logical approach to evaluating the literature in order to critically assess and challenge the assumptions and assertions of literature and place the literature in the context of the contemporary operating environment. The taxonomy placed available literature into the following categories: international, United States, and Iraqi law, United States military doctrine and professional journals, United States government, PSP industry, and private institutional research and studies, academic research, and media reporting.

Law

Legal research explored the legal basis for PSPs operating on the battlefield, with emphasis on international and United States law, DoD regulations, and Iraqi law, as well as relevant legal commentary offered by scholars. This research sought to define the legal status of PSPs and the amount of regulation to which they are subject. Scholars and press reports often refer to the unclear or confusing legal status of PSPs. This chapter clarifies the legal status by citing relevant international, United States, and Iraqi laws, and military regulations that define the legal status of PSPs and govern their conduct.

Any discussion of PSPs must begin by discussing the international legal framework in which such firms operate. Available literature often begins by exploring the definition of mercenary, provided in chapter 1 and derived from the Geneva Convention of 1949. In 1989, the United Nations sought to define mercenary conduct, proposing the U.N. International Convention against the recruitment, use, financing, and training of mercenaries in an effort to define actions of mercenaries as “offenses” and to establish extradition procedures in the case of violations. This proposal focused on those mercenaries who were specially recruited to participate in the overthrow of a legitimate government or to undermine the authority of a state.¹ The United States government does not consider employees of PSPs to fit the definition of mercenary and the literature provides legal opinion to support this contention. For instance, Australian legal scholar Donald Rothwell notes that armed security contractors can avoid the mercenary definition established under Protocol I, Article 47 of the Geneva Convention by claiming that their role is not to “fight,” but rather to provide physical or personal security of a strictly defensive nature.² Further, Peter W. Singer adds that the motivation for private

gain necessary to meet the definition of a mercenary is almost impossible to prove, as an individual could claim a motivation such as belief in a cause, camaraderie, or a pursuit of adventure in order to avoid the characterization of one's activities as taken exclusively in the pursuit of private material gain.³ Offering the most valuable commentary on the international legal environment in which PSPs operate, Singer contends in his essay that appeared in the *Columbia Journal of Transnational Law* that no relevant international law exists to govern private military firms; they essentially operate in a legal vacuum in which jurisdictional issues are unclear at best. He further contends that international law is perhaps "too primitive" to address the complexity and variety of private military actors and their activities and is thus currently irrelevant to any discussion on PSPs.⁴ The definition of armed mercenaries composed in an effort to combat the practice of private organizations interceding in the affairs of sovereign states at the behest of a rich benefactor clearly did not envision the contemporary operating environment, where private corporations are providing a multitude of services, to include armed protection, to mostly incumbent governments.

The next and perhaps more critical legal issue is the combatant status of PSP employees. While many might argue that such a distinction is meaningless in a place such as Iraq where civilians are targeted, kidnapped, and even beheaded with alarming regularity, the distinction is nonetheless important in international law. In order to skirt the slippery issue of noncombatant contractors performing arms-bearing work on the battlefield, the United States designates such workers as combatants.⁵ However, United States' doctrine declares that such personnel are neither combatants nor noncombatants, terming such persons as civilians accompanying the force and therefore subject to

protection as prisoners of war. Declaring PSP personnel to be combatants, however, does not pass muster under International Committee of the Red Cross (ICRC) rules established to interpret the Geneva Convention. According to ICRC, in order to be considered a combatant, one must fall under “responsible command.” In ICRC’s view, there is no responsible command within a corporation; the responsibility of command rests in the state, not the corporation.⁶ United States law and doctrine tends to support the ICRC view, noting that regardless of their combatant status, contractors fall outside the purview of military command and authority, thus suggesting that the state is not exercising responsible command over PSPs.

While international convention is of little consequence to even the most nefarious activities of PSPs, there are a number of United States laws and regulations that attempt to control the industry. Beginning with the International Traffic in Arms Regulations (ITAR) enacted under the Arms Export Control Act, American companies that desire to enter the private security market and shop their skills overseas must register with the State Department’s Office of Munitions Control, apply for and obtain a license, and provide the office with annual reports which include the type of service provided, dollar value, and recipient.⁷ ITAR further allows for criminal sanctions should United States entities or persons violate its provisions. What ITAR lacks, however, is an oversight and enforcement mechanism to ensure that the activities of license holders are consistent with those for which the license was granted. For most PSPs, ITAR is simply an administrative process that the company must navigate. Once complete, PSPs operating in a combatant commander’s area of responsibility fall under other statutes and regulations, depending the contracting agency or client and location.

The United States government agency for whom the PSP work plays a large part in determining the regulatory mechanism to which the PSP will be subjected. If the DoD contracts for the services of the PSP, then the firm is subject to the Military Extraterritorial Jurisdiction Act (MEJA) of 2000. MEJA holds DoD civilian contractors working overseas criminally liable under United States law for offenses committed on United States military installations or within the control of United States military commanders if no Status of Forces Agreement is in effect. Notably, MEJA applies only to civilian contractors working for the DoD.⁸ Thus PSP employees working in a belligerent country on behalf of the State Department, Central Intelligence Agency, or for a subcontractor, as many PSP employees in Iraq do, are immune from the provisions of MEJA. In practical terms, the effect of MEJA is dubious. Richard Dunn, writing for the University of Maryland's School of Public Policy, considers MEJA to be "more a gesture than a serious vehicle to assert control over civilian contractors accompanying the force."⁹ Dunn points out that given the requirement to hold MEJA proceedings in United States federal courts, the logistical and practical impediments to prosecution make the possibility of prosecution unlikely. Coupled with the fact that military commanders have no authority to decide to prosecute under MEJA, it is little wonder that in spite of over 20,000 PSP employees working in Iraq for over three years, MEJA has yielded no prosecutions of PSP personnel.¹⁰ In cases that cannot be prosecuted under MEJA, United States authorities can invoke Title 18, Section 7(9)(A) of the *U.S. Code*, which extends criminal jurisdiction to "diplomatic, consular, military, or other United States government entities in foreign states."¹¹ Additionally, offenses committed against United States citizens or military personnel can be prosecuted under the Patriot Act of 2001. The

language of individual contracts notwithstanding, United States authorities have the means available to prosecute crimes committed by PSP personnel in Iraq. On a practical level, the ability to invoke those measures remains in question.

Following victory during the major combat phase of OIF, the United States established the Coalition Provisional Authority (CPA) to oversee reconstruction in Iraq and govern the country until the transfer of sovereignty back to the Iraqi people. As the CPA, military coalition, and numerous agencies and corporations involved in the reconstruction began to employ contractors in response to a growing security threat, the CPA published a number of regulations to establish the legal parameters within which PSPs were to operate. The most relevant of these were *Coalition Provisional Authority Order Number 17: Status of the Coalition Provisional Authority, MNF-Ira and Certain Missions and Personnel in Iraq* and *Coalition Provisional Memorandum Number 17: Registration Requirements for Private Security Companies*, signed by CPA Administrator Paul Bremer in the days prior to the dissolution of the CPA and transfer of sovereignty to the Interim Iraqi Government. *CPA Order No. 17* required PSPs and their employees to comply with all Iraqi registration and licensing requirements, but provided immunity from Iraqi law for contractors performing in accordance with the terms of their contract. The order awarded criminal jurisdiction in cases of criminal misconduct to the nation from which the PSP originated.¹² Registration and licensing requirements, as explained in *CPA Memorandum No. 17*, dictated that the firm must provide detailed information to the Iraqi Ministry of Trade and Ministry of Interior to gain business and operating licenses, respectively. PSPs were required to provide names of personnel, weapons information, details of the contract and client, and subject themselves to the Ministry of

Interior vetting process whereby PSP personnel had to meet the established requirements and restrictions of the Ministry of Interior. Under the *Memorandum No. 17*, PSP personnel were prohibited from engaging in military operations or the performance of law enforcement functions. The memorandum also limited the weapons PSPs could possess to 7.62 millimeter or lower, essentially restricting PSPs from using any heavy weaponry. Finally, *CPA Memorandum No. 17* required PSPs to observe the *Multinational Force-Iraq (MNF-I) Rules for the Use of Force (RUF)* and the *Code of Conduct for Private Security Companies*.¹³ So while subjecting PSPs to a number of administrative requirements, the CPA also exempted these firms and their employees from criminal liability in Iraqi courts. Therefore, criminal jurisdiction for contractor personnel rests with the “sending state” or home country of the accused.

Responding to the growing interest in the use of PSPs in Iraq by both scholars and the media, Congress, in enacting the defense appropriation bill for Fiscal Year 2005, required the DoD to tighten the restrictions on PSPs. Enacted as the Ronald W. Reagan National Defense Authorization Act for 2005, the language contained in the law underscores the Congressional uneasiness with the perceived murky legal status of PSPs operating in Iraq. Attempting to clarify the legal status of PSP employees, Congress required the Secretary of Defense to report on the following with respect to contractors deploying with military forces:

1. Provide a description of the overall chain of command and oversight mechanisms that are in place to ensure adequate command and supervision of contractor employees in critical security roles.

2. Provide a description of sanctions that are available to be imposed on contractor employees who fails to comply with a law or regulation or who engages in misconduct.

3. Provide a description of disciplinary and criminal actions brought against contractor employees during the period between 1 May 2003 and the enactment of the law.

4. Provide an explanation of the legal status of contractor employees engaged in the performance of security functions in Iraq after the transfer of sovereignty on 28 June 2004.¹⁴

In addition to the legal questions, Congress also required the Secretary of Defense to report on the number of contractor fatalities due to hostile fire, numbers of hostile fire incidents, types of missions in which armed contractors are employed, and what plans are in place to ensure military commanders have appropriate and complete information regarding contractor activities. Going beyond reporting requirements, the law also required the Secretary of Defense to do the following with respect to contractors supporting deployed forces and reconstruction efforts in Iraq:

1. Provide a means of rapidly identifying PSP personnel to members of the Armed Forces.

2. Provide a means to share relevant threat information with PSP personnel.

3. Provide assistance to PSP personnel who become engaged with hostile forces.

4. Investigate background and qualifications of PSP personnel and organizations.

5. Establish rules for the use of force for PSP personnel and ensure proper training and compliance with rules for the use of force.

6. Establish categories of security, intelligence, law enforcement, and criminal justice functions that are inherently governmental functions or that, while not inherently governmental, should not be performed by contractor personnel.

7. Establish procedures for determining which security, intelligence, law enforcement, and criminal justice functions will be performed by military personnel and which will be performed by private companies.¹⁵

8. Invoking his constitutional authority as Commander-In-Chief to “supervise the unitary executive branch,” President Bush demurred on many of the requirements levied by the 2005 defense authorization act.¹⁶ However, the DoD did publish a new set of regulations for contractors in the Defense Federal Acquisition Regulation Supplement of June 2005. The regulations represent an effort to improve coordination between contractors and the military during deployment and tightened the restrictions on contractor activities. The regulations require the contractors to comply with all United States and host nation laws and orders of the combatant commander and also require contractors to conduct security and medical screening of all employees and to have a plan to replace employees who are sent home. The regulations give the contracting officer authority to order the removal of contractor employees who jeopardize or interfere with mission accomplishment and prohibit contractors from wearing military uniforms unless authorized by the combatant commander and provided that the uniform clearly distinguishes contractor personnel from military personnel. The new regulations also specify that the combatant commander will provide force protection for all contractor personnel and facilities, though the regulations do not include any requirement to provide protection for nonDoD contractors. While the regulations provide more clarity to the

contractor-military relationship, the introductory language confuses the legal status of contractors and fails to recognize the functions of many PSPs by stipulating that contractor personnel are not combatants nor will they undertake any activities, such as the use of force, to jeopardize their status. Specifically, the regulations preclude contractors from directly participating “in acts likely to cause harm to enemy armed forces.”¹⁷ Such language not only fails to recognize the role of PSPs, but also ignores the nature of the enemy in the contemporary operating environment.

Doctrine

Doctrine outlines the conditions under which United States forces employ contractors, the relationship between United States forces and contractors, and the responsibility of military commanders with respect to contractors. While discussion of contractors is mostly limited to joint and United States Army logistics doctrine, the thesis must also include an analysis of joint and service operational doctrine in order to provide context to the employment of PSPs in a deployed environment. Field Manual 3-0, *Operations*, and Field Manual 3-07, *Stability and Support Operations*, identify the types of operations that United States forces are undertaking in Iraq. Specifically, United States Army doctrine identifies LLOs, which in the context of this thesis provides a framework for understanding the types of operations in which PSPs may be involved. Operational doctrine, however, is silent on the issue of contractors operating in a unit’s battle space.

Current logistics doctrine offers the only doctrinal guidance to United States forces employing contractors. The nature of logistics doctrine presupposes that any coverage of contractors contained therein would be mostly limited to service provider firms identified in chapter 1. Joint Publication (JP) 4-0 outlines the types of support

contractors may provide to deployed personnel, categorizing such support as systems support, external theater support, and theater support. JP 4-0 further adds conflicting and arguably incorrect guidance on the legal status of contractors, stating that contractors are immune from the authority of military commanders to either compel them to perform or punish misconduct.¹⁸ JP 4-0 also addresses the issue of armed contractors, providing the following guidance:

As a general rule, contractor personnel accompanying U.S. forces should not be armed. Regardless of military experience or reserve status, contract personnel are not military personnel. Issuing weapons to contractor personnel deployed in an uncertain or hostile environment can cloud their status, leaving them open to being targeted as a combatant.¹⁹

The publication further notes that contractor employees should not work in environments or scenarios where they might be perceived as combatants, stating that United States forces should not arm contractors and have no legal basis to do so since contractors fall outside the purview of military justice and therefore military commanders have no means to ensure that armed contractors will act in accordance with the Law of War or host nation law.²⁰ The language contained in JP 4-0 makes it apparent that current doctrine fails to consider the current operating environment by not recognizing that adversaries in the COE do not consult international convention when choosing targets. Clearly, any person deploying with or supporting deployed United States forces will be targeted, international law notwithstanding. In this case, joint doctrine has failed to maintain currency given rapidly evolving civil-military relationships in Iraq and Afghanistan. United States Army doctrine likewise focuses its guidance relative to contractors on those providing logistics services to deployed forces. Two publications, the contractor-written FM 3-100.21 and AR 715-9, discuss the roles of contractors, reasons for their

employment, relationships with United States forces, and guide contracting officers in managing contractors in a deployed environment. While the United States Army is the only service providing such doctrinal guidance in employing contractors, the doctrine does not discuss interaction with armed contractors. United States military doctrine, much like international legal convention, is therefore too primitive to offer substantive guidance to military commanders operating in a dangerous counterinsurgency (COIN) environment such as exists in Iraq.

Government, Industry, and Institutional Studies

Research and analysis available through government agencies and private institutions was examined to address primary, secondary, and tertiary research questions. Such products are available through the GAO, the Congressional Research Service, the Center for Public Integrity, and the British American Security Information Council. Research also included a review of the websites of relevant organizations in both government and the private security industry to gain perspective on the various organizations that operate in Iraq and their activities. This review proceeds chronologically in order to highlight the trends in the development of the private security industry, its activities, and its relationship with the government over the past five to seven years.

Prior to OIF, the PSP industry had already gained wide recognition and acceptance and was preparing to assume an increasingly important role in military operations. Examining PSPs in light of the Balkans experience, Herbert Howe of the National Defense University's Institute for Strategic Studies offered an assessment of the use of PSPs, noted the reasons why states use such firms and, while conceding that such

firms would continue to play a role in military operations, asserted the need for both international convention and United States law to frame tighter regulation of the industry in order to avoid the mercenary label and provide more legitimacy to PSP activities.²¹ As the stability and support phase of Operation Enduring Freedom began, PSPs began to reclaim their share of government largess. Writing for industry advocate International Peace Operations Association in July 2002, Doug Brooks argued for expanding the use of PSPs from their more conventional use as guards for infrastructure and resources to the protection of people. Brooks answered anticipated criticism by further arguing that PSPs could provide protection of personnel with minimal additional regulation, noting that United States laws such as ITAR and MEJA were already established, the industry policed itself through International Peace Operations Association's own Code of Conduct, and that any necessary additional regulation or oversight could be provided through "informal agreement" between client and contractor.²² Brooks was clearly successful in his effort to lobby for an expanded use of PSPs, as the United States government chose the services of DynCorp to provide protection for Afghan President Hamid Karzai and, at the outset of stability and support operations subsequent to major combat in OIF, chose the PSP Blackwater, U.S.A. to protect CPA Administrator Paul Bremer under a 21 million dollar contract. These two contracts were the beginning of what became an explosion in the United States government reliance on PSPs to perform a wide range of security services in Iraq due to an unexpectedly widespread and violent insurgency.

As security problems brought about by the growing insurgency began to plague reconstruction efforts, the CPA increased its reliance on PSPs to perform security

functions left unfilled by United States forces. The proliferation in the CPA's use of PSPs lead to increased scrutiny of PSPs and their activities from the Congress, the GAO, the DoD, and independent research institutions. The relevant studies and reports identify the reasons for the increased reliance on PSPs, problems and issues associated with PSP activity, and offer recommendations for corrective action.

In his 1998 essay, Herbert Howe pointed out that the United States military employed contractors to fill voids in force structure or capabilities, achieve economic advantage, or to realize political advantages by avoiding troop limitations or avoiding the scrutiny that accompanies the employment of military forces.²³ For PSPs specifically, government and industry reports note various reasons that the United States military relies on such firms to provide essential security services in Iraq. In a June 2003 report to Congress, the GAO cited the decrease in the size of the military, increase in operational tempo, more complex weapons systems, avoidance of troop limitations, and availability of critical skills as reasons for employing contractors in place of armed forces.²⁴ In September 2004, David Isenberg, in writing for the British-American Security Information Council, offered that the Pentagon's reliance on PSPs in Iraq was an ill-conceived ad hoc solution that resulted from the Administration's failure to match adequate resources against the international legal requirements of an occupying force and the worsening security situation.²⁵ In 2005, the GAO again reported to Congress, focusing their work on the Pentagon's use of PSPs in Iraq. Reporting on actions needed to improve the use of PSPs in Iraq, the GAO noted that the military response to inquiry regarding the rationale for using PSPs for security that "providing security for [reconstruction] contractors is not the stated mission of the U.S. military."²⁶ Nor,

apparently, does the military have responsibility to secure contractor facilities. According to a Memorandum of Agreement between the Departments of Defense and State with respect to security responsibilities in Iraq, the Ambassador is responsible for the security of all Executive Branch employees and DoD personnel assigned or providing direct support to the State Department. The State Department thus hires contractors to provide the security for many of its personnel and facilities. As for those contractors participating in the reconstruction effort, a review of contracts confirmed that security is a responsibility of the contractor, who then relies on PSPs to provide the security essential for reconstruction efforts to proceed.²⁷

While authors cite various reasons for the government's use of PSPs in Iraq, the results that the contractors achieved also varied. Isenburg's report and the GAO's 2005 report cite numerous challenges associated with PSPs in Iraq, chief among them being the problematic coordination and cooperation between military authorities and the civilian PSPs that operate within the battlespace. Particularly troublesome is the pervasiveness of blue-on-white engagements--twenty incidents in a five-month period--and the command and control problems associated with contractors operating inside a commander's battlespace, yet remaining outside the bounds of the military commander's authority.²⁸ While these problems suggest serious fissures in the civil-military relationship in Iraq, the problem appears more acute when considering both Isenburg's and the GAO's suggestions of deep animosity between PSP and military personnel due to aggressive recruiting efforts of PSPs targeted at military personnel and the pay differential between military personnel and PSP employees, who can make over 2 thousand dollars per day in tax free wages in Iraq, compared with the approximately 25 hundred dollars per month

paid to military rank and file members.²⁹ The reports also suggest that PSP employees operate in a legal vacuum, where questions of criminal jurisdiction are unclear, at best. While Isenburg's report is mostly complimentary of PSP performance, he identifies cases where PSPs' contracts were not renewed due to lack of effectiveness or poor performance, with one case involving security on oil infrastructure and the other for training Iraqi Security Forces. Isenburg also reported that private companies' efforts to achieve security through PSPs met with mixed results, noting that PSPs could seldom meet the needs of reconstruction contractors and those clients often replaced the PSP due to the contractor's inability to meet the security needs of the client.³⁰ The GOA report further suggests that the lack of effectiveness in achieving a secure environment through the use of PSPs often meant that contractors would pay more for security as conditions worsened, thus resulting in increased security costs, and delayed or cancelled projects due to the high costs of providing security at those sights. Isenburg further notes that the reliance on PSPs has brought problems with contract oversight, lack of control over and accountability of PSPs, the growing political influence of the PSP industry, and the dubious backgrounds of many third country PSP personnel.

The purpose of the Isenburg's and 2005 GAO's reports was to offer recommendations on how to respond to the shortcomings in the employment of PSPs. Both reports were presented under the assumption that PSPs would continue to play a significant role in military operations. Accordingly, the recommendations focus on how to address the particular shortcomings in order to improve interoperability with PSPs during operations, while providing for effective regulation of and accountability for PSP activities and misdeeds. Table summarizes the recommendations:

Table 2. Recommendations to Improve Military-Private Security Provider Interoperability

BASIC*	GAO**
Increased oversight by Congress, DoD, and the services	Government standardize and enforce minimum standards for PSP qualification, personnel training, and provide lists to firms seeking PSP protection
Clarification of international legal status of PSP employees via a Geneva Convention-type legal construct	Ensure Multi-national Force-Iraq (MNF-I) understands reason for blue-on-white engagements and develops procedures for coordination of operations and protection of PSP and military personnel
Tighter standards for determining conditions under which the military employs PSPs.	Develop training package for deploying personnel, providing training in coordinating activities with PSPs, PSP Standard Operating Procedures (SOPs), MNF-I procedures and regulations regarding contractors, and DoD support to PSPs.
Government screening of PSP employees	DoD and DoS establish means to accurately account for security costs
Impose and enforce international standards for conduct of PSPs	
Increase number of U.S. contracting officers and improve training	
Ban firms that are found guilty of misconduct	
Widen MEJA to cover non-DoD contractor personnel	

* David A. Isenberg, *A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Security Companies in Iraq* (United Kingdom: British American Security Information Council, 2004), 69-72.

** Government Accounting Office, GAO-05-737, *Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers* (Washington, DC: GPO, 2005), 43-45.

Isenberg's comprehensive list of recommendations are reminiscent of Howe's 1996 essay calling for the clarification of PSP legal status and an international legal framework for regulation and enforcement of PSPs. And while the GAO is much more skeptical of the military's use of PSPs, rather than arguing for the scaling back or

elimination of PSPs in military operations, the GAO concedes that PSPs will continue to play a prominent role in military operations.

Academic Studies and Research and Professional Journals

The research of scholars and military officers into the military's use of private military firms dates as far back as the mid-1990s. Much of the work focuses on the military's increased reliance on support firms to provide logistical support or support to increasingly complex weapons and communications systems. However, recent work explores the government's use of private firms to perform armed functions, citing as examples the roles and activities of PSPs in OIF. Most scholars are critical, if not skeptical, of the government's reliance on PSPs to perform military functions in Iraq. The most recent works that are particularly relevant to this thesis include those of Peter W. Singer, Deborah D. Avant, and Deborah Kidwell. Collectively, these scholars offer a comprehensive look at why the government and other private entities rely on private security, what benefits and drawbacks are associated with that relationship and, in Singer's case, how governments can best assert control over the industry. Particularly relevant to this thesis are the commonalities shared by the research of these authors. Each one identifies the international legal issues raised by private security, the fissures in the civil-military relationship that may result, and the slippage in effectiveness and control that occurs when a government relies on private entities to perform the traditionally sovereign function of security.

Almost every scholar notes the legal challenges that surface when governments employ PSPs, particularly in another sovereign nation. Such employment of PSPs creates uncertainty regarding the legal status of PSP employees, particularly with respect to

international convention. While civilians are regarded as either lawful combatants or noncombatants depending on their functions, scholars contend that PSP employees fall somewhere in between, as they are not beholden to military law, are not deserving of combatant status under the Geneva Convention, and are certainly not deserving of the protections that noncombatant status affords. Jurisdictional issues further confuse the legal status of PSP employees, particularly third country nationals that are so pervasive in Iraq, coming from one country to work in another, for a company who works for yet another. Avant argues that while the law is fairly clear for United States and Iraqi nationals, for third country nationals questions of criminal jurisdiction make the possibility of prosecution less likely. Avant further contends that such issues serve to erode the effectiveness of international institutions and international law, creating an undefined extra-legal status of PSP personnel. As Kidwell contends, this extra-legal status creates international friction and complicates the security situation by introducing another belligerent whose legal status is unclear. Avant, Singer, and Kidwell are all very critical of the effect that outsourcing security functions may have on the civil-military relationship. For any discussion on the nature of the civil-military relationship, context is best provided by Samuel Huntington. Huntington, in the *Soldier and the State*, characterized the relationship between military professionals and the state as critical to the security of the state, noting that the military officer's purpose is above all to serve the nation and employ his skills for the benefit of the nation. For the officer, Huntington argues, the rewards of such service are social rather than financial, since the officer's passion lies in the preservation of the state vice financial reward.³¹ Singer cites Huntington in advancing his contention that relying on PSPs results in an erosion of the

civil-military relationship by juxtaposing the motives of PSP employees against those of the military professional.³² Singer points out that while the United States military is the most respected of government institutions because of its perceived integrity and values-based focus on selfless service, the motivation of PSPs is profit and material gain. Using PSPs, therefore, alters the Huntington-inspired equation that military service and skill are utilized only for the benefit of the state.³³ Singer points out other civil-military cleavages that result from relying on PSPs, noting the tension caused by soldiers and contractors performing the same functions, yet contractors being paid significantly higher salaries, and the tension caused by differing expectations of the respective roles of military and PSPs, negative stereotypes, distrust, and in some cases competition.³⁴ Furthermore, Singer argues that using PSPs will theoretically have a destabilizing effect on civil-military relations when the actions or use of PSPs impinge on the military's prestige, when PSP employees receive higher pay than soldiers for similar tasks, or when PSP personnel and activities are kept separate from, rather than integrated into, military forces and operations.³⁵ Highlighting the encroachment that using PSPs poses to military professionalism, Singer argues:

The armed services have long seen themselves as engaged in a unique profession, set apart from the rest of civilian society, which they are entrusted with securing. The introduction of [PSPs], and their recruiting from within the military itself, challenges that uniqueness; the military's professional identity and monopoly on certain activities is being encroached upon by the regular civilian marketplace.³⁶

Avant adds that tensions already exist due to the military's perceived lack of authority and control over PSPs, echoing many of Singer's concerns. Adding to the existing tension, Avant adds that contracting out military functions erodes the idea of service to the nation and decreases the public's regard for military service, since the public will

predictably look upon any contracted function as less important. According to Avant, the reduced esteem of military service will reduce the value placed on service, resulting in problems with retention, recruiting, and ultimately reducing the institutional effectiveness of the military.³⁷

Each of the authors question the efficacy of the United States policy of using PSPs based on the loss of control that results. Both Avant and Singer cite the tyranny of the contract, wherein the government is beholden to the requirements of the contract in spite of what might become a rapidly changing situation on the ground, as often happens in warfare. In addition to noting the loss in social control due to the diminished status of the civil-military relationship, Avant argues that as a contract specifies a service and the time frame in which the service will be provided, the contract thereby reduces the government's flexibility to respond to changing conditions or changing priorities and thus weakens the government's functional control over the use of force.³⁸ Singer also eschews these "contractual dilemmas," wherein the contract, rather than public service or trust, defines the relationship between the government and PSP. According to Singer, contractual dilemmas create tensions between the security interests of the client and the PSP's desire to maximize profit at minimal cost and risk.³⁹ Therefore, the public good and the private firm's best interests are often at odds. Presumably, the PSP will apply the minimal amount of resources to a particular problem to save costs, and will apply force to protect the client to the exclusion of all other objectives in order to ensure the success of the firm under the contract's requirements. Just as Avant suggested, Singer also notes that while contracts are concise, clearly defined legal instruments, war is a complex, chaotic environment, where "unique situations and numerous ambiguities exist."⁴⁰ Clients may

become too reliant on the PSP, to the point that the PSP may hold a certain amount of leverage over the client, choosing to renegotiate a contract at the worst possible time for a client. A worst case scenario, according to Singer, would be a situation where a PSP or even a few of its employees abandon the contract in the face of increased danger.⁴¹ Such a situation is considered desertion in the military, but there is little the government can do to a civilian, other than imposing financial sanctions against the contractor. Hence, according to Singer, employing contractors to perform soldiers' tasks results in a loss of control since contractors fall outside military authority both legally and operationally. While some remain and perform their jobs under the most adverse conditions, some may not. To Singer, such mixed results do not bode well for military commanders or civilian administrators who must rely on contractors.⁴² Adding to the loss of control that employing PSPs entails is the difficulty in overseeing so many contracts and their actions of their employees with relatively few contracting officers. Further adding to the loss of control over the use of force is what Kidwell refers to as the lack of command authority over contractors and the unclear boundaries between contractors and the military. Kidwell goes on to argue that such loss of control results in reduced effectiveness of the military and its operations. The scholars noted above, therefore, conclude that without strict regulatory mechanisms, using PSPs in military operations erodes the government's ability to effectively control all facets of military operations, most notably the use of violence against enemies.

Periodicals, Press Briefings, and News Articles

Media interest in PSPs exploded following the Fallujah massacre of the Blackwater contractors. Much of the reporting mirrors the work of scholars, and often

includes quotes by Singer and Avant in various articles. Relevant media coverage is often skeptical of PSPs and includes interest in many of the issues noted above, with particular interest in command and control and accountability issues, regulation of PSPs, and the unclear legal status of PSPs. Numerous media reports include coverage of animosity between contractors and military personnel and soldiers leaving the military to cash in their skills with PSPs, with media reports citing PSP salaries at ten times that of the average soldier. Additionally, news reporting notes the increased Congressional scrutiny of the cost of PSPs juxtaposed against their effectiveness and the often-cited concerns over brutal and intimidating PSP tactics undermining military COIN efforts.

Most media reporting was valuable to the overall research effort and reflected many of the trends detected in other research. However, a number of news articles were overly critical of PSPs to the point of being misleading or factually incorrect. For instance, a Fox News online series on PSPs led with a story that purports to be about blue on white violence, and then slips into gossip-laced anecdotes about disputes between contractors and military authorities and reports of contractors being dealt with unfairly by the military in Iraq. The series incorrectly characterizes very dangerous blue on white incidents as antagonism between contractors and military personnel.⁴³ Reporting on an incident in which Marines detained sixteen PSP employees for an alleged blue on white shooting incident, Fox News offers a critique of the Marines' handling of the contractors, publishing allegations of mistreatment and physical abuse during detention. However, the story fails to mention the broader problem with the firm in question, Zapata Engineering, who while occupying their own compound hired security from three different and often opposing groups to protect the compound and the Zapata employees. The firms providing

security included one group of Kurdish Peshmerga militiamen, one group of former Iraqi Republican Guard soldiers, and another group of former United States military personnel, who often had to keep the Kurds and former Iraqi Republican Guard soldiers from engaging in intramural violence.⁴⁴

Public Broadcasting Service's *Frontline* produced perhaps the most relevant and comprehensive reporting on PSPs done in a single piece. The series of interviews that Public Broadcasting Service conducted for *Private Warriors* included interviews with a well-known scholar who specializes in military contracting issues and two Marine officers who dealt with contractors extensively while commanding forces in Iraq. The interview subjects are mostly critical of both the use of PSPs and PSP actions in Iraq. Steven Schooner, a law professor at George Washington University, asserts that any contracting of "arms-bearing work" is a mistake, noting that contractors become expendable when their deaths and injuries are not reported, that contracts in effect "incentivize" killing to defend the client, and echoes much of the literature that highlights the problem of military commanders losing the ability to control activities within their battlespace.⁴⁵ Colonel Thomas X. Hammes is much more critical of the military's reliance on PSPs to provide essential security, noting that PSPs, while effective in fulfilling contractual obligations of protecting their client, often use overly aggressive tactics while doing so. Illustrating Hammes' contention was a February 2006 incident in which a PSP employed by the State Department shot and killed two civilians in an "aggressive vehicle incident" in the Northern Iraqi city of Kirkuk. The incident proved particularly problematic for the local military commander responsible for maintaining security in the city. The media report cited Iraqi and United States military condemnation

of “indiscriminate and unpunished shootings of Iraqi civilians by contractors.”⁴⁶ Such tactics create animosity among Iraqi civilians, which becomes detrimental to COIN efforts. Hammes further points out that the security provided by PSPs creates a separate class of people and breeds animosity among those who do not enjoy such a level of protection, particularly Iraqi civilians. Hammes contends that such isolation from the population is counterproductive in COIN warfare, where the counterinsurgent must assume risk in order to stay connected with the population. Instead of relying on contractors to provide essential security in a COIN environment such as exists in Iraq, Hammes contends that the military should only employ contractors for clearly defined, repetitive security of mostly fixed installations in areas that are not affected by insurgent violence. Any security requirements beyond that, Hammes argues, should be performed by uniformed military forces.⁴⁷ Though not as critical of PSPs as Hammes, Colonel John Toolan concedes that contractors’ motivations are often not consistent with military objectives. Noting the paradoxical relationship between the military and PSPs, Toolan points out that the military must rely on contractors to relieve many of the burdens associated with the reconstruction and COIN, but that such reliance may in the end make the military’s job more difficult.⁴⁸

Finally, more recent media reports discuss the burgeoning costs associated with private security. Most accounts note that due to the precarious security situation in Iraq, the portion of reconstruction money spent on private security has grown to between 22 and 25 percent of reconstruction expenditures.⁴⁹ Reports also note that in spite of the nearly 6 billion dollars of reconstruction money spent on private security, the security environment has remain unchanged from 2003 through 2005.⁵⁰ Most notably, media

reports relevant to the research cite the president's acknowledgement that insurgent efforts to sabotage infrastructure and reconstruction efforts continue to have a significant impact on the overall reconstruction effort.⁵¹

¹United Nations General Assembly, 72nd Plenary Meeting, U.N. Doc A/Res/44/34, *International Convention against the Recruitment, Use, Financing, and Training of Mercenaries*, 4 December 1989.

²Donald R. Rothwell, *Legal Opinion on the Status of Non-Combatants and Contractors under International Humanitarian Law and Australian Law*, 24 December 2004 [database on-line]; available from http://www.aspi.org.au/pdf/ASPIlegalopinion_contractors.pdf; Internet; accessed on 30 November 2005.

³P. W. Singer, "War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law," *Columbia Journal of Transnational Law* 42 (2004): 52.

⁴*Ibid.*, 526.

⁵Richard L. Dunn, *Contractors in the 21st Century "Combat Zone"* (Edgewater, MD: University of Maryland School of Public Policy, Center for Public Policy and Private Enterprise, 2005), 22.

⁶*Ibid.*

⁷22 U.S.C., Chapter I, Subchapter M, rev. Apr. 1, 1992.

⁸US Congress, 106th Congress, PL 106-523, *Military Extraterritorial Jurisdiction Act of 2000*, 18 U.S.C., Sect. 3261-67 (2000) [database on-line]; available from http://www.feds.com/basic_svc/public_law/106-523.htm; Internet; accessed on 30 November 2005.

⁹Dunn, 25.

¹⁰Dunn, 86.

¹¹Global Policy Forum, "Q & A: Private Military Contractors and the Law," *Human Rights Watch*, 21 October 2004 [database on-line]; available from www.globalpolicy.org/security/issues/iraq/attack/law/2004/1021Q&A.htm; Internet; accessed on 2 December 2005.

¹²United Nations Security Council, *Coalition Provisional Authority Order Number 17*, 27 June 2004.

¹³United Nations Security Council, *Coalition Provisional Authority Memorandum Number 17*, 26 June 2004.

¹⁴U.S. Congress, Public Law 108-75, Ronald W. Reagan Defense Authorization Act for 2005, Sect. 1206, 28 October 2004.

¹⁵*Ibid.*, Sect. 1205.

¹⁶White House, President's Statement on the Ronald W. Reagan National Defense Authorization Act, 29 October 2004 [statement on-line]; available from <http://www.whitehouse.gov/news/releases/2004/10/20041029-6.html>; Internet; accessed on 10 December 2005.

¹⁷Department of Defense, Defense Federal Acquisition Regulation Supplement, 48, *Code of Federal Regulations*, Part 252.225-7040, 5 May 2005 [database on-line]; available from <http://www.fedgovtcontracts.com/pe05-80.htm>; Internet; accessed on 30 November 2005.

¹⁸Department of Defense, Joint Publication 4-0, *Doctrine for Logistics Support for Joint Operations* (Washington, DC: GPO, 2000), V-5-8.

¹⁹*Ibid.*, V-7.

²⁰*Ibid.*

²¹Herbert Howe, Strategic Forum No. 140, *Global Order and Security Privatization* (Washington, DC: National Defense University, Institute for National Strategic Studies, 1998).

²²Doug Brooks, "Protecting the People: The PMC Potential" Comments and Suggestions for the UK Green Paper on Regulating Private Military Services, *International Peace Operations Association Quarterly* (25 July 2002), 3.

²³Howe.

²⁴Government Accountability Office, GAO-03-695, *Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DoD Plans*, 5 June 2003 [document on-line]; available from www.gao.gov/cgi-bin/gctrpt?; Internet; accessed on 25 September 2005.

²⁵Isenberg

²⁶Government Accountability Office, GAO-05-737, *Actions Needed to Improve Use of Private Security Providers* (Washington, DC: GPO, 2005), 10-13.

²⁷For detailed information on reconstruction in Iraq, see the Center for Public Integrity website. Contracts reviewed for this chapter were for reconstruction services

provided by Perini Corporation and Zapata Engineering Inc. Contracts are available, respectively, from http://www.publicintegrity.org/docs/wow/Perini-CENTCOM_construction.pdf and <http://www.publicintegrity.org/docs/wow/Zapata-Munitions.pdf>; Internet; accessed on 12 December 2005.

²⁸Government Accounting Office, GAO 05-737, 21.

²⁹Isenburg, 27.

³⁰*Ibid.*, 37-38.

³¹Huntington, 15.

³²Singer, 198.

³³*Ibid.*, 205.

³⁴*Ibid.*, 200.

³⁵*Ibid.*, 198.

³⁶P. W. Singer, "Outsourcing War," *Foreign Affairs* 84, no.2 (March/April 2005): 119.

³⁷Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (New York: Cambridge University Press, 2005), 138.

³⁸*Ibid.*, 123.

³⁹Singer, 151.

⁴⁰*Ibid.*, 152.

⁴¹*Ibid.*, 160.

⁴²Singer, "Outsourcing War," 119.

⁴³Liza Porteus, *Iraq New War Zone: American vs. American*, Fox News Online, 29 June 2005 [story on-line]; available from http://www.foxnews.com/printer_friendly_story/0,3566,161170,00.htm; Internet; accessed on 8 August 2005.

⁴⁴LtCol David Kluegel, USMC, A/CS, G-3, 1st Marine Logistics Group, I Marine Expeditionary Force, Personal interview by author on 12 December 2005, Camp Pendleton, CA.

⁴⁵Steven Schooner, Interview by Public Broadcast Service, *Frontline: Private Warriors*, 19 May 2005 [interview on-line]; available from <http://www.pbs.org/wgbh/>

pages/frontline/shows/warriors/interviews/schooner/html; Internet; accessed on 19 September 2005.

⁴⁶Jonathan Finer, "State Department Contractors Kill 2 Civilians in N. Iraq," *Washington Post*, 9 February 2006 [article on-line]; available from <https://www.us.army.mil/suite/earlybird/Feb2006/e20060209416113.html>; Internet; accessed on 9 February 2006.

⁴⁷Thomas X. Hammes, Colonel, Interview by Public Broadcast Service, *Frontline: Private Warriors*, 21 March 2005 [interview on-line]; available from <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/interviews/hammes/html>; Internet; accessed on 19 September 2005.

⁴⁸John Toolan, Colonel, Interview by Public Broadcast Service, *Frontline: Private Warriors*, 4 April 2005 [interview on-line]; available from <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/interviews/toolan/html>; Internet; accessed on 19 September 2005.

⁴⁹Rowan Scarborough, "Iraqi Construction Funds Go To Security," *Washington Times*, 9 February 2006 [article on-line]; available from <https://www.us.army.mil/suite/earlybird/Feb2006/e20060209416135.html>; Internet; accessed on 9 November 2006.

⁵⁰*Ibid.*

⁵¹Peter Baker, "Bush Cites Setbacks In Rebuilding Iraq By The U.S.," *Washington Post*, 8 December 2005.

CHAPTER 3

RESEARCH DESIGN

The purpose of this research is to determine whether or not the presence of PSPs on the battlefield has had a detrimental impact on military objectives in Iraq. The research must include an analysis of existing international, United States and Iraqi law governing the activities of PSPs and why the United States government relies on PSPs to provide armed security of convoys, installations, critical infrastructure, and high ranking officials. Given the context of OIF, research identifies the nature of current military operations and discusses how PSPs contribute to or detract from that mission. Of particular emphasis is how the presence of armed civilians operating within a military commander's battlespace affects the civil-military relationship in Iraq. Finally, the research details some of the broader implications of employing PSPs to provide essential security in a COIN campaign and on civil-military relations in general.

This research is a qualitative approach to addressing the primary, secondary, and tertiary research questions identified in chapter 1 and summarized above. Each chapter of the thesis connects the research questions with the completed research, and then places the conclusions drawn from research into the context of current trends in operational design and COIN doctrine. Research design, therefore, will propose legal and operational frameworks to analyze the impact of PSPs in OIF in order to address the research questions.

Legal Framework

Much of the criticism that scholars and the media direct towards the government's reliance on PSPs concerns the question of legal jurisdiction and accountability. Much of the literature includes claims that PSP employees fall into a legal vacuum, in which questions of criminal liability are unclear, at best, and where combatant status is confusing.¹ Analysis of the legal environment of PSPs, therefore, will include a framework in order to analyze each legal question, identify the applicable law or regulation that addresses that question, and identify the effect of the law. In doing so, the analysis will uncover seams in current law in order to explore areas for possible corrective legislative efforts. Table 3 identifies each of the legal questions to be addressed in chapter 4 in order to define the legal environment of PSPs in Iraq.

Table 3. Legal Environment of Private Security Providers

Legal Question	Applicable Law	Effect
PSP employees mercenaries?	What law or regulation applies that may answer the question?	If law exists, what is the practical effect on gaining governmental control over PSPs and the use of force?
PSP personnel lawful combatants?		
PSP actions subject to international law?		
PSP actions subject to US law?		
PSP actions subject to Iraqi law?		
Regulatory mechanism in place governing PSP activities?		
Rules governing PSP use of deadly force?		
Oversight and enforcement mechanisms governing PSPs?		

Friendly Center of Gravity

Given the definition and construct of CG provided in chapter 1, this research design includes analysis of the friendly CG in Iraq in order to identify crucial elements that United States forces must protect from insurgent activity. The analysis associates key elements within the CG construct with the government's use of PSPs, identifying those elements that involve the use of PSPs to accomplish a given mission, supply a critical requirement, or protect a critical vulnerability. While figure 1 identifies a friendly CG construct for Iraq, chapter 4 identifies PSP involvement in each element and identifies the effect of that relationship. Quantitative data on the effects on the use of PSPs is scarce; therefore, chapter 4 reflects mostly qualitative results of the PSP and client relationship.

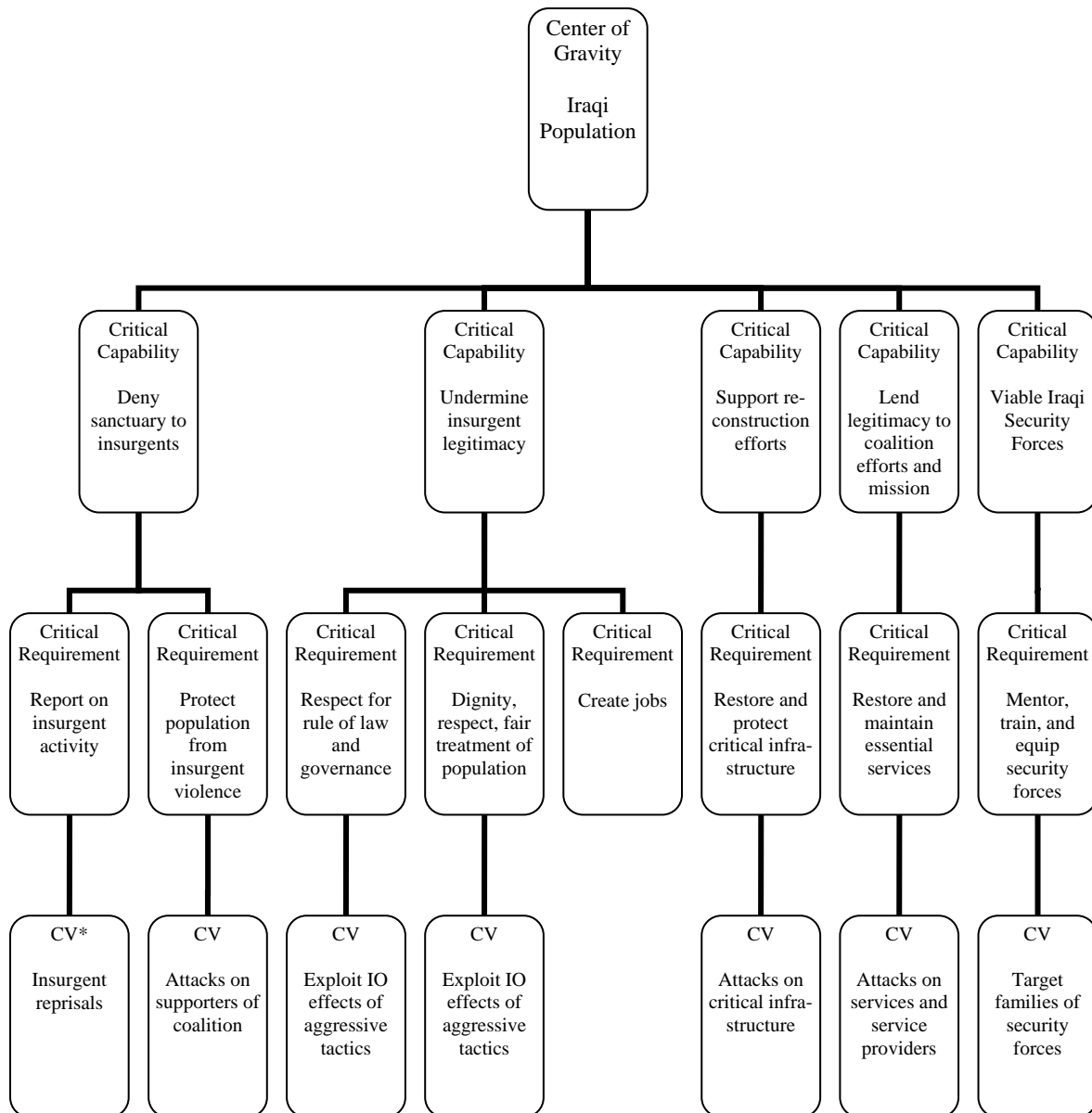


Figure 1. Friendly Center of Gravity Analysis-Operation Iraqi Freedom
 * CV: Critical Vulnerability. *Source:* Center of Gravity analysis conducted by the author, using Dr. Joe Strange model cited in chapter 1.

Logical Lines of Operations

As defined in chapter 1, LLOs are the various activities in which military forces must engage in order to be successful. As with the CG analysis, the author will examine contractors' activities in the context of these LLOs to determine where coalition forces

employ contractors and to what effect. Figure 2 identifies the logical lines of operations in Iraq.

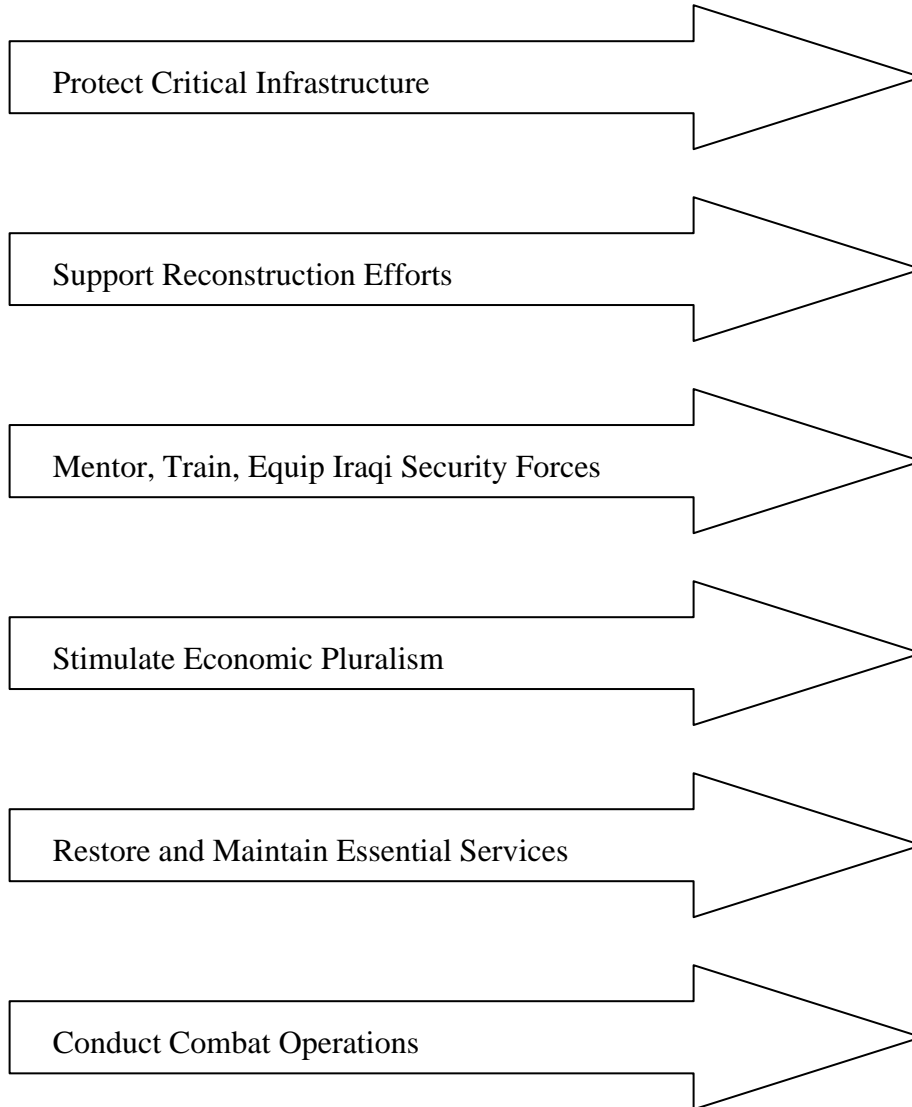


Figure 2. Logical Lines of Operations-Operation Iraqi Freedom

In chapter 1 the nature of the conflict in OIF was posed as a secondary research question. Analyzing the friendly CG and critical vulnerabilities and the LLOs in OIF

reveals the nature of the conflict as a COIN war, referred to in current doctrine as COIN operations. COIN operations are military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat an organized movement that is aimed at the overthrow of a constituted government.² In order to evaluate the effectiveness of using PSPs in COIN operations, it is necessary to evaluate what is decisive in this type of warfare. In his seminal work on COIN warfare, David Galula offers a number of decisive points that the counterinsurgent must master to be successful. Galula contends that the population is the primary decisive point and that the counterinsurgent must protect the population and the economy to be successful.³ According to Galula, the counterinsurgent seeks to create disorder, disrupt the economy, and promote discontent among the population, thereby undermining the strength and authority of the government.⁴ The population being the prize of both insurgent and counterinsurgent, the counterinsurgent must leave no area or segment of the population unprotected. Galula further contends that the government's credibility with the population will be a decisive factor in gaining the population's support, noting that the government must deliver on promises, as the population will judge based on action vice words.⁵ Emphasizing his point, Galula declares that "nothing could be worse than promising reforms and being unable or unwilling to implement them."⁶ Placing Galula's work in the context of OIF, promises made by the United States to the Iraqi people extend to not only services and infrastructure restoration and protection, but perhaps most importantly to the establishment and maintenance of respect for the rule of law and Iraqi government legitimacy.⁷ Finally, Galula notes the importance of static forces on the battlefield, such as the government employs PSPs, as crucial in COIN for the protection

of the population and its resources, noting that such static units are more decisive than combat forces as they are most often in direct contact with the population. So important are such static units that the success of COIN efforts hinge on their success.⁸ Chapter 4 will therefore examine the government's employment of PSPs in the context of the nature of the conflict in OIF and Galula's prescription for success in COIN, with particular emphasis on applying anecdotal and qualitative analysis to arrive at a judgment regarding the effect of PSPs on mission success in Iraq.

Conclusions and Recommendations

In much of the literature authors concede that PSPs are here to stay. The question then becomes how best to employ PSPs in future conflicts in a manner that will contribute the mission accomplishment. Chapter 5 draws conclusions from the analysis contained in chapter 4 and proposes a framework for employing PSPs in future operations and conflicts.

¹See chapter 2, 15, 27, 30.

²Department of the Army, Field Manual 3-07, *Stability Operations and Support Operations* (Washington, DC: GPO 2003), 3-3.

³David Galula, *Counterinsurgency Warfare: Theory and Practice* (Westport, CT: Greenwood Publishing, 1964), 13.

⁴*Ibid.*, 11.

⁵*Ibid.*, 14.

⁶*Ibid.*, 104.

⁷Whitehouse, *National Strategy for Victory in Iraq*, (Washington, DC: GPO, 2005), 13 and 25.

⁸*Ibid.*, 93, 111.

CHAPTER 4

ANALYSIS

Introduction

Victory in Iraq relies on a triumvirate strategy of three interconnected tracks; linking success to progress in political pluralism, economic development, and security. Of these three, the first two are clearly dependent on the third.¹ The White House, *National Strategy for Victory in Iraq*, points to the criticality of improving the security situation in Iraq, with particular emphasis on protecting key infrastructure. According to the Bush administration's strategy, infrastructure protection is the linchpin that will allow the coalition and Iraqi government to restore essential services, render possible the collection of revenues, and ultimately provide the Iraqi government with the means to establish confidence among the population. Presumably, gaining the population's confidence is critical to increasing support for the government, eroding support for the insurgency, and ultimately achieving in victory.² Yet, with infrastructure protection and restoration being so critical to success in Iraq, the United States has relied heavily on PSPs to provide for the protection of these facilities. Relying on the legal and operational constructs introduced in chapter 3, this chapter will analyze the government's use of PSPs in Iraq to determine the effect such use has had on stability and, ultimately, the success of coalition efforts in Iraq. Further, this chapter, in analyzing PSPs in Iraq, will analyze the broader implications of the government's reliance on PSPs to perform armed functions traditionally monopolized by the state.

Legal Framework

Chapter 2 revealed scholars' attempts to point out the various legal issues surrounding the use of PSPs in Iraq. Trends that emerged from chapter 2 include scholars' concerns over the unclear combatant status of PSP personnel, seams in criminal jurisdiction in cases of PSP employee misdeeds, and the lack of authority and therefore control that military commanders may exert over PSP employees operating on the battlefield. What follows is a discussion of the primary international legal regime concerning the Law of War and its application to PSPs, with further discussion on United States and Iraqi law applicable to PSPs. When combined, these legal mechanisms frame the legal environment of PSPs that allows analysis of whether the United States' use of PSPs is consistent with stated objectives of establishing and upholding the rule of law in Iraq and, ultimately, of imposing and maintaining a secure, stable environment.

Law of War and the Geneva Convention

The Geneva Convention is instructive in answering many of the basic legal questions regarding PSPs that appear in table 3, particularly the question of PSP employee legal status. The convention defines conflict and establishes the standards persons must meet to receive combatant immunity as prisoners of war. Part I, Article 2 of the Geneva Convention affirms that conflict is present when armed action exists between two or more states and further applies in cases of partial or complete occupation of another sovereign's territory, such as the United States in Iraq. Article 4 delineates the lawful participants in armed conflict, establishing combatant immunity for specific categories of persons. Such categories include members of armed forces and identifiable militias under a responsible commander, and nonmilitary members who accompany

armed forces as civilian members of aircrews, correspondents, supply contractors, or laborers. The last category is most relevant to the discussion of PSPs. Although the United States government asserts that PSPs are covered under the umbrella of protection provided by the Geneva Convention, the law did not envision a situation in which persons accompanying a military force perform arms-bearing work on behalf of that force, as is the case in Iraq. While United States doctrine states that PSPs are neither combatants nor noncombatants, doctrine never trumps law. According to the law, PSP employees must fall within one of the two categories; otherwise they are unlawful belligerents. Considering the mission of many PSPs in Iraq, it is clear that they function as an extension of the military. It is also clear that PSPs are not armed merely for self-protection. PSPs provide protection for military personnel, military facilities, and military convoys, all traditional military responsibilities; all legitimate targets. If PSPs are providing protection, then they, too, are legitimate military targets. Therefore, PSP employees are not noncombatants. If PSPs are combatants, they must fall under the “responsible command” of military authority and, according to Article 48 of the Geneva Convention, they must be identifiable and recognizable as such. PSPs do not meet these standards either. Therefore, given the role and purpose of PSPs in Iraq and the irreconcilable contradiction that role creates with international law, the legal status of PSPs is quite clear: They are mercenaries.

The term mercenary often invokes images of small bands of highly trained warriors overthrowing a weak incumbent government followed by a quick and heroic exit of the mercenary force, all within the context of the mercenary receiving a handsome material or financial reward. Mercenaries have come a long way since *The Dogs of War*.

They are now sophisticated multinational corporate entities. Chapter 2 cited the work of P. W. Singer and Donald Rothwell, who both conclude that PSPs do not fit the Geneva Convention's definition of mercenary. Under Part III, Article 47 of the Geneva Convention a mercenary is any person who is recruited for the purpose of participating in conflict, takes direct part in hostilities, is not a member of the armed forces of one of the parties to the conflict, is motivated by private gain, and is paid a substantially higher salary than that paid to military members of similar ranks and functions, is not sent by a state on official duty as a military member, and is neither a citizen of the state participating in conflict nor a resident of territory controlled by that state. Of the six conditions above, PSP employees meet the first five. Singer argues that motivation for private gain is impossible to prove, but the pay disparity between soldiers and PSP employees suggests otherwise. Certainly, a PSP employee may cite his ardent patriotism as primary motivation for participating in what is a very dangerous conflict, but reducing that employee's salary to that of the soldier would assuredly identify the depth and intensity of one's patriotic furor. Just as the private security firm's motive is profit, so too is the individual's. Rothwell argued another angle, pointing out that the work of PSP is of a strictly defensive nature. The British PSP Aegis, however, openly advertises its ability to conduct pre-emptive security operations.³ In COIN, many military and security tasks are of a defensive nature, with many operations executed as pre-emptive defensive measures. The defensive nature of such operations, however, does not make them any less lethal or military. Given the nonlinear, noncontiguous nature of the battlefield and the nature of COIN warfare, the military and security work that PSPs perform in Iraq

places them in a very direct role in the COIN effort. Therefore, PSPs are indeed taking a direct part in hostilities.

Whether the legal standard requires meeting all elements of the Geneva Convention's mercenary definition or any one of the elements remains open to debate. The practical matter is that regardless of whether one subscribes to the idea that PSPs are mercenaries or whether or not the law is unambiguous on the matter, the fact is that Article 47 comes close enough to question the legitimacy of such entities as the government employs them in Iraq. In COIN in general, and particularly in Iraq, legitimacy is everything. There are enough questions surrounding the rationale for the war in the first place and the overall effort that has followed. The means employed in the effort, therefore, should be beyond reproach in the eyes of the coalition and international community. When the United States conducts warfare in such a manner as to ignore or sidestep international convention and basic laws of warfare, such a condition could create fissures within the international community and the coalition itself. The question of legitimacy is also primary to earning the trust and confidence of the Iraqi people and their governing institutions as well. As the coalition develops and mentors Iraqi security and judicial institutions, it would be much more beneficial if official United States actions were more consistent with international legal regimes. In the case of the United States employment of PSPs, that is not the case.

United States and Iraqi Law

United States law further defines the legal environment of PSPs in Iraq. The MEJA, summarized in chapter 2, provides for prosecution of crimes committed overseas by DoD civilians, contractors, and subcontractors of any tier. Many of the thousands of

PSP employees working in Iraq, however, do not work for DoD or their contractors and are therefore beyond the reach of MEJA. In normal circumstances, contractor misdeeds would fall within criminal jurisdiction of the host nation, but in the case of Iraq the Interim Iraqi Government continued the *Coalition Provisional Authority* policy of granting immunity to PSP employees performing contractual obligations. Thus, with the United States and sovereign Iraqi government abdicating their responsibility to monitor, enforce, or prosecute contractor misconduct, there remains a critical seam in legal jurisdiction in Iraq. Even if that were not the case, the practical effect of MEJA would remain in dispute. In practical terms, bringing a case to court under MEJA is extremely difficult. MEJA requires prosecutions in United States federal courts, creating impediments to interviewing witnesses, examining the accused, and allowing for adequate defense. As noted in chapter 2, MEJA's record of no prosecutions in spite of over 20,000 PSP employees operating in Iraq for over three years reveals the law's practical effect. Beyond the practical problems of MEJA, however, is the problem of legitimacy in the eyes of the international community and, more importantly, the Iraqi population. A criminal prosecution brought to the court under MEJA would most likely involve a case where the victim is an Iraqi citizen. A MEJA case, tried in a United States courtroom on United States soil, would offer the victim or the victim's family very little transparency. Such a proceeding would be similar to prosecuting a murder that occurred in Oregon in a North Carolina courtroom. The imperative of legitimacy demands a measure of transparency that MEJA does not provide in Iraq.

The White House, *Strategy for Victory in Iraq*, lists establishing and maintaining respect for the rule of law as an objective of United States policy in Iraq. Considering the

United States employment of PSPs in the context of established international law, what must the Iraqi government and her citizens think of the United States when it preaches respect for the rule of law and yet unleashes a small army of heavily armed civilians among the Iraqi civilian population, virtually immune from the reach of Iraqi or any other nation's laws? Even if misconduct resulted in a trial and conviction, how would those proceedings be shown to the community that was victimized or destabilized as a result? The shaky legitimacy of United States policy under international legal convention, the lack of transparency provided for under MEJA, and the obvious absence of respect for the rule of law in holding PSPs accountable in cases of misconduct combine to have a destabilizing impact on the coalition's ability to successfully wage COIN operations in Iraq. Among other reasons, laws exist to allow governments to assert control, protect its citizens, and provide for their welfare. In the case of Iraq, the legal environment of PSPs does not accomplish any of those objectives.

Center of Gravity: Critical Requirements and Critical Vulnerabilities

Figure 1 identified the author's assessment of the CG construct for Iraq, noting the critical capabilities, requirements, and vulnerabilities that contribute to or endanger the CG. This analysis will focus on the critical requirements identified in figure 1, determining where PSP activities touch critical requirements, and to what affect. Likewise, the analysis will then turn to critical vulnerabilities to determine PSP contribution in protection or endangering a critical vulnerability. Analysis focuses on three key areas of PSP involvement within Figure 1: Dignity, respect, and fair treatment of the population, restoring and protecting critical infrastructure while restoring and maintaining essential services, and establishing and sustaining Iraqi security forces.

In COIN operations, the civilian population is the prize. As Figure 1 outlines, the population is the CG in Iraq, which if kept on the side of the coalition will undermine the legitimacy of the insurgency and erode and ultimately eliminate the insurgent's primary source of support. In preserving the CG, the coalition must protect the population and conduct operations in such a manner that prevents the creation of new enemies among the population. During the United States Army's Third Infantry Division's (3d ID) 2005 tour in Iraq, its "make no new enemies" mantra was consistent with this theme. The various PSPs working in the 3d ID's battle space, however, did not subscribe to this theme. Over a three-month period, the Division's Deputy Commander, Brigadier General Karl Horst, recorded twelve separate shooting incidents involving civilians and PSPs, a few of which involved incidents where contractors were "clearing by fire," employing their weapons indiscriminately to suppress would-be attackers. The twelve incidents resulted in the deaths of six Iraqi civilians, with another three receiving injuries. Subsequent to one such attack that resulted in the deaths of three Iraqi civilians, 3d ID suffered a fatal attack in the same location that Horst attributed not to insurgents, but rather to family and tribal members seeking retribution for the deaths of the Iraqis.⁴ Incidents such as indiscriminate shootings, smashing into and shooting up vehicles, and terrorizing civilians were not limited to 3d ID's battle space. In another incident, employees of the PSP Custer-Battles brought allegations against fellow employees, accusing them of shooting into Iraqi civilian vehicles to clear a traffic jam while escorting arms and ammunition for the Iraqi Army.⁵ Additionally, employees of the British PSP Aegis reportedly produced a video which shows PSP personnel shooting up civilian vehicles, with a backdrop of music and commentary to entertain the viewer.⁶ These incidents undermine coalition efforts to

realize the critical requirements of upholding respect for the rule of law and ensuring the dignity, respect, and fair treatment of the civilian population that are so critical to undermining the insurgency. Unpunished abuse of Iraqi civilians at the hands of PSP employees allows the insurgents to exploit such incidents and gain powerful information operations (IO) victories, further undermining coalition efforts to win the support of the population. As figure 1 reflects, the negative IO effects of PSP misdeeds are a critical vulnerability of coalition forces as they attempt to win over the Iraqi population.

Figure 1 identifies restoration, maintenance, and protection of critical infrastructure and essential services as additional critical requirements necessary for coalition forces to win the support of the Iraqi population. In Iraq, the coalition relies heavily on PSPs to protect infrastructure that is critical to the improvement of the Iraqi economy and the lives of Iraqi citizens. This critical infrastructure suffers from neglect, poor maintenance, and aggressive targeting by insurgent forces. The United States has committed a tremendous amount of resources to upgrading and protecting power grids, oil production facilities, water pumping stations, and sewer systems. However, the results that the United States has achieved while relying on PSPs to provide security for critical infrastructure or construction sites are mixed, at best. Prewar oil production in Iraq was measured at 2.5 million barrels per day, while electricity generation was measured at 4.0 megawatts per day. By November 2005, the daily oil production, a key to economic viability for Iraq, was 2.0 million barrels per day while electricity production was 3.7 megawatts per day.⁷ Attacks on electricity-generating and oil production facilities have resulted in widespread fuel shortages, an eightfold increase in gas prices in Baghdad, and have left residents with an average of six hours of electricity per day.⁸ Erinys, the South

African PSP, was hired to provide security to Iraqi infrastructure and eventually lost its contract due to its inability to protect the pipelines and infrastructure.⁹ Coupled with such mixed results are the effects of increased security costs on the coalition's ability to complete reconstruction projects. While relying almost completely on PSPs to provide security for work sites and workers, security costs have accounted for over fifteen percent of reconstruction costs, resulting in funds being reallocated to cover these burgeoning costs.¹⁰ The GAO reported that fourteen power generation projects were eliminated in Iraq to cover the costs of paying for PSPs. The government's use of PSPs, therefore, has created a paradoxical cycle. PSPs have not made job sites safer, and as a result the reliance on PSPs has increased, resulting in spiraling costs, which in turn have led to a decrease in the number of reconstruction projects. As David Galula asserted in his unofficial manual on COIN, "nothing could be worse than promising reforms and being unable or unwilling to implement them."¹¹ Contrary to the coalition's stated goal of improving the lives of Iraqis in an effort to win the support of the population, the reliance on PSPs has neither brought security nor allowed the coalition to bring about the level of reconstruction required to achieve the desired effects.

Logical Lines of Operations

Ostensibly, PSPs conduct operations of a limited nature within the clearly defined parameters of the contract. They do not conduct full-spectrum operations. In COIN operations, all operations within particular LLOs may have effects within other LLOs. Figure 2 identifies the author's construct of LLOs that many units face in Iraq. The efforts of PSPs and coalition forces often intersect within these LLOs, particularly those involving protection of critical infrastructure, restoration and maintenance of essential

services, and support to reconstruction efforts. Given the requirements of COIN operations, military personnel understand that infrastructure security is itself a full-spectrum operation involving the fusion of intelligence, logistics, fires, information operations, and communications. Operations to secure oil pipelines usually stretch across multiple unit boundaries. Those boundaries will involve various military and civilian jurisdictions. Protection will entail a significant IO effort to gain the support of local citizens to gather intelligence, assess loyalties, or purchase protection. Units must share intelligence in order to allow appropriate response to planned attacks on infrastructure before those attacks materialize. Military forces, therefore, can provide an active defense, integrating the effects of each warfighting function in order to protect critical infrastructure. Such is not the case with PSPs.

Numerous obstacles prevent PSPs from conducting full-spectrum operations, thus diminishing their ability to provide effective defense for critical infrastructure and reconstruction efforts. Disclosure issues prevent military forces from sharing sensitive intelligence with many PSPs, thus withholding information that might allow PSPs to provide more effective defense against terrorists. More importantly, PSPs are purely a passive defensive measure. To preserve the thin veil of noncombatant status, the United States does not permit PSPs to pursue or conduct operations to disrupt or prevent suspected attacks against targets guarded by PSPs. While a military force can conduct such defensive-oriented offensive operations, for a PSP to do so would be murder under international law. A military force, on the other hand, will most often assume an active defensive posture when guarding a potential insurgent target. Military forces will rely on a host of intelligence collection assets to provide indications and warnings of attacks and

to respond to or preempt attacks from insurgents. While such a posture may not eliminate the threat of attack, it will certainly allow the military force the adequate mechanism to reduce the threat. As noncombatants, PSPs must rely on strictly defensive measures to provide the level of security their contract requires.

In COIN operations, military forces must conduct all operations within each LLO in careful consideration of the effect that operation may have in other LLOs. This is particularly true with kinetic operations against suspected insurgent forces. Such operations often have detrimental effects on other LLOs, with broader effects that undermine the overall effort to achieve stability. PSPs, on the other hand, need not consider such second and third order effects that their activities may bring about. For PSPs, the primary and sometimes only consideration is the protection of their client. The PSP employee need not worry about making new enemies or what effect his operations might have on the operations or objectives of the local military commander. The requirements of the contract allow the PSP to conduct his operations to the exclusion of all other concerns, which in the worst case creates a situation that Steven Schooner described as “incentivized killing.” The military commander, however, must carefully weigh the need to conduct kinetic strike operations with the need to maintain stability within his battlespace. The PSP knows that he must protect his client in order to be successful in fulfilling the obligations of his contract, so all other concerns are subordinate. The military commander must weigh decisions to use force against the context of the overall nature of the mission, ensuring the use of force is nested with political objectives. The result is what P. W. Singer termed a “contractual dilemma,” in which the public good and the interests of the private firm are at odds. The missions of

PSPs and military forces, therefore, are often contradictory, creating serious implications for military commanders.

The Use of Violence: Responsibility, Accountability, and Implications

The unsolved contradiction between the motives of the firm and those of the government places PSPs and military forces at odds on the battlefield. Although the military commander is normally assigned an area to control and safeguard, he has almost no control over PSP personnel who may enter that area. Military commanders may be able to prevent PSP personnel from entering an area, but if the PSP enters the area anyway and interferes with military operations or requires a level of assistance that places additional burdens and risks upon military forces, commanders have little recourse. The most obvious illustration is the Blackwater incident in Fallujah, described in chapter 1. A single incident in which contractors shoot civilians or inadvertently disrupt military operations can have serious detrimental effects on military and political objectives. Not only do such incidents deprive the military commander of his discretion regarding the use of violence and the conduct of operations, but such incidents can also damage any credibility the commander may have with local host nation officials and citizenry. In the case of an indiscriminate shooting involving civilians and PSPs, the military commander cannot demonstrate his control over the fate of the locals by punishing those responsible or promising that such events will not occur in the future. The only tool the commander may have to reassure local officials and victims' families is a modest level of financial compensation, which does little to bolster the commander's credibility in the eyes of the local citizens. The PSP shooting in Kirkuk that was described in chapter 2 and the several

incidents recorded by the 3d ID in Baghdad demonstrate that the above example is not merely hypothetical; such incidents have occurred and continue to occur in Iraq. Every incident diminishes the credibility of the coalition, damages the reputation of the United States military in particular, and ultimately undermines the coalition's effort to achieve security and stability in Iraq. The effects of the military's lost control over the use of violence on the battlefield, however, extend beyond Iraq.

The Civil-Military Relationship

Of all the arguments against using private entities to perform armed service in combat, one of the more compelling involves the effect on the delicate civil-military relationship in the United States. Chapter 2 reflects the concerns of both scholars and military leaders regarding the use of PSPs to perform the same tasks as military forces. Samuel Huntington posited that military skill be exclusively employed for the benefit of the state by military professionals possessing a values-based focus on integrity and service.¹² In Iraq and Afghanistan, PSPs perform many of the same tasks as soldiers, yet do so not because of a social benefit to be derived from society, but for material gain and financial reward. The significant pay differences between soldiers and contractors, the lack of formal authority the military can impose over contractors, blue-on-white engagements, aggressive recruiting of soldiers by PSPs, and nefarious actions of contractors that adversely affect and undermine military efforts all combine to poison the civil-military relationship in Iraq. At a practical level, the above conditions cause animosity between civilians and the military. In broader terms, the government's use of PSPs reduces the effectiveness of the military, erodes the government's control over the use of force, and undermines the integrity and institutional effectiveness of the military

on a grand scale. As Deborah Avant argued, the government's reliance on contractors vice the military will diminish the relative importance of troops, with eventual effects on recruiting, retention, and ultimately the viability of the all-volunteer force.¹³ The effects of the revolutionary reliance on the market to provide military capabilities are starting to emerge, as the State Department has begun to rely on contractors rather than the military to secure the growing number of Provincial Reconstruction Teams in Iraq.¹⁴ The use of contractors in a role that is central to the interagency effort to promote stability and security does not bode well for the military. Considering the elements of national power, the interagency flavor of the Provincial Reconstruction Team will allow each of the diplomatic, informational, military, and economic elements to be coordinated by a single entity. Inexplicably, the military element of national power that creates the security conditions within which the Provincial Reconstruction Team can pursue diplomatic, informational, and economic objectives is being contracted out by the State Department. The military's role could further diminish should the government choose to take advantage of Blackwater's offer to provide a rapidly-deployable, brigade-sized force capable of conducting peacekeeping, stability, and even overt combat missions such as COIN operations.¹⁵ With the government relying on private entities rather than the military to perform such missions, it may only be a matter of time before United States taxpayers begin to question the huge investment that is required to maintain the military in its current form.

¹White House, *National Strategy for Victory in Iraq*.

²Ibid., 19-23.

³See Aegis website; available from <http://www.aegisworld.com>; Internet; accessed on 21 March 2005.

⁴Jonathan Finer, "Security Contractors in Iraq Under Scrutiny After Shootings," *Washington Post*, 10 September 2005.

⁵Lisa Meyers, "U.S. Contractors In Iraq Allege Abuses," 17 February 2005 [article on-line]; available from <http://www.msnbc.msn.com/id/6947745>; Internet; accessed on 21 December 2005.

⁶Renae Merle, "Iraq Contractor Aegis Looking Into Videos," *Washington Post*, 30 November 2005 [article on-line]; available from <http://www.us.army.mil/suite/earlybird/Nov2005/e20051130404627.html>; Internet; accessed on 30 November 2005.

⁷Nina Kamp and Michael O'Hanlon, "The State of Iraq: An Update," *New York Times*, 13 December 2005.

⁸Ellen Knickmeyer and Salih Saif Aldin, "Attacks Halt Production at Iraq's Largest Refinery," *Washington Post*, 30 December 2005.

⁹BASIC, 37-38.

¹⁰Government Accountability Office, GAO 05-737, 5.

¹¹Galula, 104.

¹²Huntington, 15, 73-74.

¹³Avant, 261.

¹⁴Bradley Graham and Glenn Kessler, "Iraq Security for U.S. Teams Uncertain," *Washington Post*, 2 March 2006: 11.

¹⁵Bill Sizemore, "Blackwater U.S.A. Says It Can Supply Forces for Conflicts," *Norfolk Virginia Pilot*, 30 March 2006.

CHAPTER 5

SUMMARY AND RECOMMENDATIONS

Summary

In response to the primary research question the author posed in chapter 1, PSPs have had a destabilizing impact on United States military objectives in Iraq. The negative impact of using PSPs to do the work of soldiers is evident at the tactical, operational, and strategic levels.

At the tactical level, PSPs pose troublesome challenges for military commanders. With PSPs operating within the commander's battle space, the commander loses control over the activities of an additional, though ostensibly allied, belligerent. The PSP's activities, movements, and even use of force are all beyond the commander's reach, fracturing his ability to establish and maintain order, stability, and respect for the rule of law within his assigned area. While the commander conducts full-spectrum operations along several LLOs, he understands that operations within any LLO will affect what occurs within other LLOs. The commander will therefore carefully balance the use of force with objectives throughout other LLOs. PSPs disrupt such discretion on the part of the commander, as the commander has little practical impact on when, how, and where PSPs apply violence within his battle space.

At the operational level, PSPs pose a direct challenge to the legitimacy of the Iraqi government. The ultimate measure of a state's sovereignty is the control over both internal and external use of force. With the pervasive presence of PSPs, who are almost immune from Iraqi prosecution operating throughout Iraq, the sovereignty of Iraq and the legitimacy of the government and its security institutions remain fragile. The

government's use of PSPs to provide critical security in Iraq erodes the status, authority, and effectiveness of fledgling Iraqi defense, security, and legal institutions. Further contributing to destabilization at the operational level, the presence of PSPs on the battlefield in Iraq undermines the coalition's efforts to conduct stability, reconstruction, and COIN operations. Thus do the negative effects of PSPs at the tactical level translate to the operational level. PSPs, as a de facto military force with enough employees to resemble a division-sized unit, often engage in activities that have effects throughout Iraq, often impeding coalition efforts and having a destabilizing impact on overall military objectives throughout the country. The Blackwater incident illustrates the degree to which PSP activities can have a negative impact at the operational level. The effect of the Blackwater incident, however, went beyond the operational level.

At the strategic level, the manner in which the coalition has employed PSPs in Iraq will have consequences far beyond OIF. The United States decision to "contract out" its responsibilities as an occupying power was an ad hoc solution that was, at best, a case of responding to a security crisis with "too little, too late" and at worst a decision to slam the door in the face of international legal convention. The decision to go with PSPs was also a vote of no confidence in the idea of international response to security challenges to lend legitimacy. The message remains that a coalition can be assembled either through diplomacy or the marketplace. A coalition, therefore, can certainly be bought. While using PSPs to overcome fractured alliances, the United States has also relied on PSPs to keep the number of troops deployed to a minimum, using contractors to perform the work of soldiers. In the United States, the resulting effect of relying on PSPs in place of soldiers to perform security functions in a combat zone is only beginning to emerge. Just

as PSPs erode the legitimacy of Iraqi security institutions, the same might be said for those of United States as well.

When Clausewitz wrote of the trinity of the people, the government, and the military, he argued that military actions and the use of force must be nested with political objectives. Clausewitz' prescription presupposed that the military would be the instrument of achieving political objectives outside the nation's borders, though would remain subordinate to the demands of the statesmen. In the United States, the *Constitution* and the *Federalist Papers* continued to rely on the assumption that the military would be the nation's sole instrument for using force in the interest of policy. At no time in the history of the United States has the nation relied extensively on private entities to use violence on the nation's behalf, particularly outside the borders. The military, as an instrument of national power, has held exclusive dominion over the use of violence.

The government's heavy reliance on PSPs, however, challenges the military's traditional monopoly over the use of violence in the pursuit of political objectives. PSPs have assumed a very direct and visible role in the coalition effort in Iraq. But while Machiavelli indicted mercenaries for failing to nest military action with political endstate,¹ his warning appears particularly prescient given the activities of many PSPs in Iraq who use violence to the exclusion of all else. Just as Galula posited that "every military move has to be weighted with regard to its political effects,"² the United States in Iraq has usurped the ability of the United States military to reasonably ensure that the use of force is used to further the political objectives of the nation and the coalition.

Given the lessons of both distant and recent history, the final research questions that remain surround the implications of using PSPs for the United States and its military services and whether or not there is a viable alternative to using PSPs in both present and future conflicts. To be sure, the United States has learned and re-learned a great deal about COIN and stability and reconstruction operations. Valuable lessons about how and when to employ PSPs have also emerged as a result of over five years of continuous operations in Iraq and Afghanistan. The remainder of this chapter, therefore, will seek to identify these lessons and offer recommendations for employing PSPs for both OIF and future conflicts.

Recommendations

The ideal battlefield, such as it might exist, would not contain any contractors. However, given the capabilities of the United States military and the increasing complexity of weapons, communications, and intelligence systems, such an arrangement would be less than practical. Contractors will continue to be a fixture on the battlefields where the United States military is found. Contractors who carry weapons, participate in combat, and perform the work of soldiers are another matter. As the recent supplement to the Federal Acquisition Regulations points out, “contractor personnel are not combatants and shall not undertake any role that would jeopardize their status. Contractor personnel shall not use force or otherwise directly participate in acts likely to cause actual harm to enemy armed forces.”³ Such guidance, seemingly eliminating all PSPs from combat zones, provides the necessary context to recommend that military forces be given exclusive domain over security efforts in what are increasingly interagency efforts in stability and reconstruction and COIN operations. The current Memorandum of

Agreement in effect in Iraq between the State Department and the DoD places the responsibility for much of the security effort, to include the personal security of many uniformed military personnel, in the hands of the State Department.⁴ In a nation with an active COIN with nearly 150,000 American troops, the policy promulgated in the Memorandum of Agreement absolves the military of its most basic responsibility in Iraq, which is to establish and maintain a secure nation and establish the conditions that enable the reconstruction effort. United States policy must recognize the military's function as an instrument of that policy, as the sole instrument of United States national power that can establish and maintain security in a manner consistent with political objectives. As Deborah Avant points out, "Control of force is most effective and legitimate when capable forces governed by acceptable political processes and operating according to shared values exert that control."⁵ The former apartheid-era South African soldiers or members of Chilean death squads that some PSPs employ do not have a set of values consistent with the American soldier or Marine; their employment is based merely on the lethality of their skills. The United States military, therefore, is the only force appropriate to employ violence in pursuit of the nation's objectives. Accordingly, PSPs have no place on the chaotic and fluid modern battlefield where the weakest points present the most lucrative targets to the asymmetrically-focused enemy and the tyranny of the contract does little to enhance the flexibility and authority of the military commander.

If expelled from situations that present the possibility of active combat, how can the United States government leverage the significant capability of PSPs? Clearly, PSPs are not going away. As P. W. Singer pointed out, the PSP industry earns approximately 100 billion dollars per year in revenues, a figure that is expected to double by 2010.⁶

Current revenues of PSPs enable the PSP industry to enjoy enormous political clout in the United States. With the political leverage that accompanies huge revenues, PSPs will undoubtedly continue to have a role in United States security policy. Under the following conditions, the United States can employ the capabilities of PSPs to their intended advantage, allowing military commanders to maximize the effectiveness of both troops and PSPs.

Laws, Not Suggestions

The manner in which the United States employs PSPs in Iraq undermines the legitimacy of international law and legal institutions, undermines the legitimacy of Iraqi security and judicial institutions, offers no transparency to the Iraqi citizenry, and does little to support the stated objective of establishing and upholding respect for the rule of law in Iraq. Furthermore, the United States reliance on civilians to perform arms bearing work violates the spirit of international law that attempts to define combatants and their responsibilities. The lack of legitimacy, transparency, and lack of respect for the rule of law that the employment of PSPs entails combine to have a destabilizing impact on coalition efforts in Iraq. In order for future employment of PSPs to enhance rather than undermine legal convention, the United States should employ PSPs in a manner consistent with the spirit of international law, ensuring that the international community and host nation accepts the legal status of civilians operating as PSPs according to accepted international legal standards. The role, function, and employment of PSPs should leave no doubt as to its legal status in order to avoid undermining international efforts to clearly identify belligerents and define their legal responsibilities. Additionally, the United States should tightly restrict the activities and movements of PSPs in order to

avoid undermining military authority or host nation security and judicial institutions.

Prior to employing PSPs in a foreign country, the United States should ensure that such employment does not run counter to a narrowly defined set of standards that ensures the use of PSPs will not undermine the legitimacy of the coalition, international or host nation law, nor upset the sometimes delicate respect for the rule of law.

Of course, if the law is too primitive to allow new solutions to security challenges, then governments or legislators can change existing laws. In the case of the MEJA, such action is necessary. While MEJA provides for criminal jurisdiction of civilians working abroad under contract to the DoD, the law provides no means to prosecute civilians under contract to other government agencies. Additionally, the law includes numerous practical impediments to prosecuting suspects, such as the requirement to try cases in United States federal courts. In order to tighten military control over civilians while offering victims the transparency that Americans enjoy in the judicial system, the United States Congress should revise MEJA. The law should become an extra-territorial jurisdiction act that allows prosecution of crimes to take place by military tribunals, conducted in the country or theater where alleged crimes occurred. When deployed in support of military forces or a military operation, all civilian contractors, regardless of function, should fall under the direct criminal jurisdiction of the military commander. Prosecution and proceedings should be local, as should punishment. Short of bringing PSPs under the purview of the Uniform Code of Military Justice, revising MEJA to allow military prosecutions in theater would enhance the transparency of the legal system and give the military a means of punishing the misdeeds of PSP employees when appropriate, thereby

affording the military commander a more appropriate level of control over what continues to be a growing segment of the military force.

Figures Lie, Liars Figure

While Pentagon leadership often reports the numbers of troops participating in Operations Enduring and Iraqi Freedom, these figures do not reflect the true level of commitment in terms of manpower. By most estimates, more than 20,000 foreign civilians are working as PSP employees in Iraq. Adding other contractors to the total, the number of civilians supporting military operations in Iraq is well over 100,000 personnel. Estimates are the best one can do when it comes to putting a human price tag on the effort in Iraq; no useful data exists as to how many contractors are actually participating in the security and reconstruction efforts. What is quantifiable, however, is the number of contractors who have been killed since OIF began. Since March 2003, more than 500 civilian contractors have been killed in Iraq, a number higher than the total losses of any single United States division.⁷ Using contractors allows Pentagon leadership to artificially deflate the manpower costs of military operations and reconstruction efforts in Iraq. The government's use of PSPs and contractors in general offers little transparency. In order for Congress and the American public to measure the true manpower investment of military operations, Congress must insist that the Pentagon reports contractor numbers alongside troop numbers. Reports of contractors supporting deployed military forces or serving in areas where United States troops are operating should include numbers of contractors, their functions, the United States government agency they support, and their country of origin. While the most recent Defense Federal Acquisition Regulations supplement aims at achieving more transparency with respect to contractors supporting

military forces, the regulations do not include contractors supporting other government agencies. In Iraq, relatively few PSP employees work under DoD contracts; most work as sub-contractors to other contractors or the State Department. Additionally, as the Pentagon dutifully reports casualty figures to the American public, the Pentagon or appropriate executive agency should report deaths of civilian contractors who die while serving United States interests overseas, intelligence operations excepted.

The Paradox of Private Security Providers

In his interview with Public Broadcasting Service's *Frontline*, Marine Colonel John Toolan remarked that although the United States military in Iraq relies on PSPs to relieve them of security burdens and thus makes the military available for other missions, the activities of PSPs often makes the military's job more difficult. As Toolan pointed out, such is the paradox that PSPs present to United States forces. The PSP will almost always accomplish its mission, but at what price to the political objectives? When PSPs use violence in Iraq, the outcome is always negative, as United States prestige and legitimacy, the coalition, the international community, the Iraqi government, and the Iraqi people all suffer. The United States government should never employ PSPs in a manner that would make the military commander's job more difficult. PSPs will of course follow the guidance of the combatant commander; contracting regulations require as much. However, the commander that planners must consider in the COE is the one with the most difficult job and the most direct contact with the population. Thus, the supported commander is not the combatant commander, but rather the battalion and company commanders who operate at the decisive point of United States policy. Prior to employing PSPs in any future deployment, if such employment has the potential to

degrade the ability of the unit commander to control his battle space or complete his mission, then PSPs should not be employed. To do otherwise risks widening the already existing fissure between low and midlevel military commanders and many PSP employees. Assigning PSPs mundane, clearly defined tasks in relatively secure areas would allow the military to create separation between PSPs and military forces while taking advantage of PSP capabilities, thereby avoiding many of the negative effects of using PSPs to perform soldiers' tasks. As Deborah Kidwell pointed out, adding an additional belligerent to the battlefield complicates an already difficult mission for the military commander.⁸ PSPs are clearly another belligerent, friend or foe, with whom the military commander must contend. Their presence on the battlefield, while intended to assist military commanders, often serves as a detriment to the commander's ability to control his battle space and complete his mission.

The reconstruction contracts that the government awarded immediately following the conclusion of major combat operations in Iraq did not mention security requirements. Only after the security situation began to worsen did contracting officers add security guards as contract modifications.⁹ The late addition of contractual provisions for private security guards reveals the ad hoc nature by which the government introduced PSPs into the conflict in Iraq. In the immediate aftermath of major combat operations, PSPs became an antidote to the perilous combination of inadequate troop strength and a worsening security situation. Hopefully the United States has learned from the experience. PSPs have grown in numbers and most notably in political strength, almost ensuring their survival and growth. The United States will continue to employ PSPs to provide security both within and outside the United States. How then, do we leverage these unique and

growing capabilities? At a minimum, the United States should assign PSPs tasks that are appropriate in the context of political mission, employ PSPs within a strictly defined legal and command and control architecture, and ensure transparency in the employment of civilians on battlefield. Above all, hopefully the United States has learned that armed civilians performing soldier's duties are never an adequate or appropriate substitute for the real thing.

¹Hackett, 10.

²Galula, 9.

³Department of Defense, 252.225-7040.

⁴Government Accountability Office, GAO 05-737, 10-13.

⁵Avant, 6.

⁶Singer, 78.

⁷Rick Jervis, "Program to Rebuild Iraq Troubled," *USA Today*, 1 May 2006 [article on-line]; available from <https://www.us.army.mil/suite/earlybird/May2006/e20010501432341.html>; Internet; accessed on 1 May 2006.

⁸Kidwell, 4.

⁹Department of Defense, Office of the Inspector General, *Contracts Awarded for the Coalition Provisional Authority by the Defense Contracting Command-Washington* (D-2004-057), 18 March 2004, 9-23 [report on-line]; available from www.dodig.osd.mil/audit/reports/fy04/04-057.pdf; Internet; accessed on 20 December 2005

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